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P.V.

469281
L.C.

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 588

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

ELECTRIC VACUUM CLEANER COMPANY, INC., AND INTERNATIONAL MOLDERS' UNION OF NORTH AMERICA, LOCAL 430, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 6, 1941

CERTIORARI GRANTED OCTOBER 20, 1941

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IN THE

United States Circuit Court of Appeals

FOR THE SIXTH CIRCUIT.

No. 8748.

National Labor Relations Board, - - - - - Petitioner,

v.

Electric Vacuum Company, Inc., - - - - - Respondent.

PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

(Filed September 9, 1940)

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Sixth Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act (Act of July 5, 135, 49 Stat. 449, c. 372, 29 U. S. C. § 151 et seq.), respectfully petitions this Court for the enforcement of its order against respondent, Electric Vacuum Cleaner Company, Inc., and its officers, successors, and assigns. The proceeding resulting in said order is known upon the records of the Board as "In the Matter of Electric Vacuum Cleaner Company, Inc. and United Electrical & Radio Workers of America, Local 720, Case No. C-266."

In support of this petition, the Board respectfully shows:

(1) Respondent is a New York corporation, engaged in business in the State of Ohio, within this judicial circuit, where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10(e) of the National Labor Relations Act.

(2) Upon all proceedings had in said matter before the Board, as more fully shown by the entire record thereof certified by the Board and filed with this Court herein, to which reference is hereby made, and including, without

limitation, a complaint, order of consolidation, respondent's motion to make complaint more definite, amended complaint, notices of postponement, respondent's answer, motion to intervene, hearing for the purpose of taking testimony and receiving other evidence, order transferring proceeding to the Board, findings of fact, conclusions of law and order, intervenors' objections to decision and order and motions to vacate and set aside or to amend said decision and order, respondent's exceptions to aforesaid decision and order, order overruling exceptions and objections and denying motions, notice to vacate and set aside findings of fact, conclusions of law and order and granting right to file objections and to apply for oral argument, order vacating and setting aside aforesaid findings of fact, conclusions of law and order, order directing issuance of proposed findings of fact, conclusions of law and order, proposed findings of fact, conclusions of law and order, respondent's and intervenors' exceptions to said proposed findings, conclusions and order and request for oral argument, and oral argument before the Board, the Board, on December 21, 1939, duly stated its findings of fact, conclusions of law and issued an order directed to the respondent, and its officers, agents, successors and assigns. The aforesaid order was amended by the Board on March 13, 1940. So much of said order, as amended, as relates to this proceeding is as follows:

ORDER.

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Sections 10(c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Electric Vacuum Cleaner Company, Inc., and its officers, successors, and assigns, shall:

1. Cease and desist:

(a) From discouraging membership in United Electrical & Radio Workers of America or any other labor organization by refusing to reinstate, or otherwise discriminating against its employees in regard

to hire and tenure of employment, or any term or condition of employment;

(b) From encouraging membership in International Molders Union of North America, Local No. 430; Pattern Makers Association of Cleveland and Vicinity; Metal Polishers International Union, Local No. 3; International Association of Machinists, District No. 54; Federal Labor Union No. 18907; or any other labor organization by discharging, refusing to reinstate, or otherwise discriminating against its employees in regard to hire or tenure of employment, or any term or condition of employment;

(c) From giving any effect to the provisions of paragraph (c) of Article III of the agreement dated May 20, 1937, with the labor organizations designated by name in paragraph 1(b) of this Order, that: "The Employer[57] agrees to employ only members of the Unions[58] in good standing in their respective Unions, and should the employer require more employees than those now employed, the Employer will secure such employees through the Unions. If, however, the Unions are unable to furnish such employees, the employer may secure them elsewhere, it being understood, however, that such employees so secured shall become members of the Union," or to any agreement which may now be in effect, in so far as such agreement requires as a condition of employment membership in the labor organizations, or any of them, designated by name in paragraph 1(b) of this Order;

(d) From giving any effect to said agreement dated May 20, 1937, or to any extension, renewal, modification, or supplement thereof, or to any superseding agreement which may now be in effect, if, as and when any labor organization other than the labor organizations designated by name in paragraph 1(b) of this Order shall hereafter be certified by the National Labor Relations Board as the exclusive repre-

[57] I. e., respondent, Electric Vacuum Cleaner Company, Inc.

[58] I. e., the labor organizations designated by name in paragraph 1(b) of this Order.

sentative of its employees for the purposes of collective bargaining;

(e) From in any other manner interfering with, restraining, or coercing its employees in the exercise of the rights of self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act;

(a) Offer to William Behrse, Steve Dragosa, William H. Fogarty, Mitchell France, Frederick Frank, Harold Koehl, John Kern, Edward Koutnik, Nicholas Kozma, Arthur Kruse, Howard Lowrance, Joseph Macho, John Masters, Alfred Meissner, George Onda, Leo Pierret, Edward Rericha, Jewell Smith, Mike Smith, Arthur Troyan, Theodore Vitosky, and George Washko, reinstatement to their former or substantially equivalent positions with the respondent, without prejudice to their seniority and other rights and privileges, dismissing, if necessary, all of the employees presently working for the respondent who were hired since March 19, 1937, and not in its employ on March 19, 1937, in the manner set forth in the Section entitled, "The remedy," above; and place those employees for whom employment is not immediately vailable upon a preferential list and offer them employment as it becomes available in the manner set forth in said Section;

(b) Make whole the following named employees for any loss of pay they have suffered by reason of failure or refusal to recall them to employment on April 5, 1937, and thereafter, by payment to each of them of a sum of money equal to the amount which he normally would have earned as wages from April 5, 1937, to March 16, 1939, and from the date of this Order to the date of his reinstatement or placement

on a preferential list pursuant to paragraph 2(a) of this Order, less his net earnings during said period deducting, however, from the amount otherwise due to each such employee, monies received by him during said period for work performed upon Federal, State, county, municipal, or other work-relief projects, and pay over the amount, so deducted, to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said work-relief projects: William Behrse, Steve Dragosa, William H. Fogarty, Mitchell France, Frederick Frank, John Kern, Edward Koutnik, Nicholas Kozma, Arthur Kruse, Howard Lowrance, Joseph Macho, John Masters, Alfred Meissner, George Onda, Leo Pierret, Edward Rericha, Jewell Smith, Mike Smith, Arthur Troyan, Theodore Vitosky, and George Washko;

(c) Make whole Harold Keehl for any loss of pay he may have suffered by reason of failure or refusal to recall him to employment on April 5, 1937, and thereafter, except temporarily from April 26 until May 10, 1937, by paying him a sum of money equal to the amount which he normally would have earned as wages from April 5 to April 26, 1937, and from May 10, 1937 to March 16, 1939, and from the date of this Order to his reinstatement or placement on a preferential list pursuant to paragraph 2(a) of this Order, less his net earnings during said periods; deducting, however from the amount otherwise due him, monies received by him during said periods for work performed upon Federal, State, county, municipal, or other work-relief projects, and pay over the amount, so deducted, to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said work-relief projects;

(d) Make whole James Mitchell and Rudolph Rummell for any loss of pay they may have suffered by reason of refusal or failure to recall them to employment on April 5, 1937, and thereafter until May 19

and 24, 1937, respectively, by payment to each of them a sum of money equal to the amount which he normally would have earned as wages from April 5 to May 19, 1937, in the case of James Mitchell and from April 5 to May 24, 1937, in the case of Rudolph Rummell, less his net earnings during said period; deducting, however, from the amount otherwise due each of them monies received by him during said period for work performed upon Federal, State, county, municipal, or other work-relief projects, and pay over the amount, so deducted, to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for such work-relief projects;

(e) Immediately post notices in conspicuous places throughout its plant, and maintain such notices for a period of sixty (60) consecutive days, from the date of such posting stating that the respondent will cease and desist in the manner set forth in 1(a), (b), (c), (d), and (e) and that it will take the affirmative action set forth in 2(a), (b), (c), and (d) of this Order;

(f) Notify the Regional Director for the Eighth Region, Cleveland, Ohio, in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.

(3) The "remedy" referred to in paragraph 2(a) of the order set forth hereinabove provides as follows:

The employees who we shall order made whole other than Mitchell and Rummell shall be reinstated by the respondent in the manner set forth below. We are of the opinion that the usual remedy in such cases is here necessary to effectuate the purposes and policies of the Act. Accordingly, we shall order the respondent to offer these employees reinstatement to their former[56] or substantially equivalent positions. All, or such number as may be necessary, of the em-

[56]By former position is meant the respective positions held on March 19, 1937.

ployees hired by the respondent after March 19, 1937, and not in the employ of the respondent on March 19, 1937, shall be dismissed to provide employment for those to be offered reinstatement. If thereupon, despite such reduction in force, there is not sufficient employment immediately available for the employees presently employed by the respondent, excluding those so dismissed, and the employees to be offered reinstatement, all available positions shall be distributed among the employees presently employed, except those so dismissed, and the employees to be offered reinstatement, in accordance with the respondent's usual method of reducing its force, without discrimination against any employee because of his union affiliation and activities, following such a system of seniority or other procedure to such extent as has heretofore been applied in the conduct of the respondent's business. In making such distribution the employees to be offered reinstatement shall be considered as entitled to the seniority and other rights and privileges which would have been theirs had the respondent not failed and refused to recall them to employment on April 5, 1937.

Those employees remaining after such distribution, for whom no employment is immediately available, shall be placed upon a preferential list with priority determined among them by such system of seniority or other procedure as has been heretofore followed by the respondent, and shall thereafter, in accordance with such list, be offered employment in their former or in substantially equivalent positions, as such employment becomes available and before other persons are hired for such work.

(4) On December 21, 1939, the Board's decision and order was served upon respondent by sending a copy thereof postpaid, bearing Government frank, by registered mail, to Messrs. L. C. Spieth and H. A. Spring, respondent's attorneys in Cleveland, Ohio.

(5) On March 13, 1940, the Board's order correcting the Board's decision and order of December 21, 1939, was duly served upon respondent in the manner set forth in paragraph (4) above.

(6) Pursuant to Section 10(e) of the National Labor Relations Act, the Board is certifying and filing with this Court a transcript of the entire record in the proceeding before the Board, including the pleadings, testimony and evidence, findings of fact, conclusions of law and order, as amended, of the Board.

WHEREFORE, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon respondent and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon so much of the order, as amended, made thereupon as relates to this proceeding set forth in paragraph (2) hereof, a decree enforcing in whole so much of said order, as amended, of the Board, and requiring respondent, and its officers, successors and assigns to comply therewith.

National Labor Relations Board,
By Charles Fahy,
General Counsel.

Dated at Washington, D. C.,
this 6th day of September, 1940.

District of Columbia, ss:

Charles Fahy, being first duly sworn, states that he is General Counsel of the National Labor Relations Board, petitioner herein, and that he is authorized to and does make this verification in behalf of said Board; that he has read the foregoing petition and has knowledge of the contents thereof; and that the statements made therein are true to the best of his knowledge, information and belief.

Charles Fahy.

Subscribed and sworn to before me this 6th day of September, 1940.

John E. Lawyer,
Notary Public, District of Columbia.

My Commission expires August 31, 1944.

(Seal)

PETITIONER'S DESIGNATION OF RECORD

(Filed September 9, 1940)

Comes now the National Labor Relations Board, the petitioner herein, by its counsel, and pursuant to Rule 15 (5) of this Court, files this designation of the portions of the transcript of the record herein which shall be contained in the printed record:

1. In accordance with Rule 15 (5) of the Rules of this Court, the following is hereby designated and shall be printed:

(a) The petition for enforcement.

(b) The decision and order of the National Labor Relations Board dated December 21, 1939, which contains the findings of fact, conclusions of law, and the order of the National Labor Relations Board sought to be enforced; and the order of the National Labor Relations Board dated March 13, 1940, correcting the aforesaid decision and order.

(c) This designation for printing; any designation of respondent for printing that may be filed herein; any designation of an intervenor entitled to participate in the designation of the record; and any counter-designation filed herein.

(d) The certificate of the National Labor Relations Board annexed to the transcript of the record filed in this Court.

2. The stenographic transcript of the hearing before the Trial Examiner, numbered from pages 1 to 919, inclusive, is hereby designated and shall be printed.

3. The following exhibits are hereby designated and shall be printed:

Board Exhibits Nos. 6, 7, 8, 11, 15, 19, 20, 23, 24, 26, 27; C. I. O. Exhibit No. 1, and A. F. of L. Exhibit No. 2.

Board Exhibit No. 9 shall be omitted, except that the exhibit may be described in the printed record as follows:

> Board Exhibit No. 9 is identical with the exhibit annexed to respondent's answer, and is a form of contract between respondent and the following named labor organizations, affiliated with the American Federation of Labor, to wit:
>
> Metal Polishers' International Union, Local No. 3, International Association of Machinists, District No. 54, International Molders Union of North America, Local No. 430, Pattern Makers Association of Cleveland and Vicinity, Federal Labor Union No. 18907.

Board Exhibit No. 10 shall be omitted, except that the exhibit may be described in the printed record as follows:

> Board Exhibit No. 10 is identical with the exhibit annexed to respondent's answer, except that the signatures of the parties to the contract are filled in.

4. The following are hereby designated and shall be printed:

The charge filed by United Electrical and Radio Workers of America, sworn to April 22, 1937;

The complaint and notice of hearing issued May 21, 1937;

The motion by respondent to make the complaint more definite and certain;

The amended complaint and notice of hearing, issued May 28, 1937;

The answer of respondent to the amended complaint, verified June 4, 1937;

Petitioner's Designation of Record

The motion for permission to intervene of Metal Polishers' International Union No. 3, International Association of Machinists, District No. 54, International Molders Union of North America, No. 420, and Federal Labor Union No. 18907;

The order of the National Labor Relations Board designating William R. Ringer as Trial Examiner, dated May 26, 1937;

The order transferring the proceeding to the National Labor Relations Board, dated November 1, 1937;

The order of the National Labor Relations Board directing the issuance of proposed findings of fact, proposed conclusions of law, a proposed order, and a proposed direction of election, and granting the parties the right to file exceptions, request oral argument, and permission to file a brief;

The proposed findings of fact, proposed conclusions of law, proposed order, and proposed direction of election, issued June 21, 1939;

Exceptions of respondent to the proposed findings of fact, proposed conclusions of law, and proposed order;

Exceptions of intervenors to the proposed findings of fact, proposed conclusions of law, proposed order, and proposed direction of election;

The notice of hearing before the National Labor Relations Board, dated August 2, 1939.

The list of appearances at the oral argument before the National Labor Relations Board of September 14, 1939.

Dated this 6th day of September, 1940.

Respectfully submitted,

(S) Charles Fahy,
General Counsel
National Labor Relations Board,
Shoreham Building, Washington, D. C.

RESPONDENT'S DESIGNATION OF ADDITIONS TO RECORD

(Filed September 24, 1940)

Now comes Electric Vacuum Cleaner Company, Inc., respondent herein, by its counsel, and, pursuant to Rule 15 (5), files this designation of additional portions of the transcript of the record herein which shall be added to the printed record.

(1) In accordance with Rule 15 (5) of the rules of this court, the following is hereby designated, and shall be printed:

(a) Decision, findings of fact, conclusions of law, and order issued by the National Labor Relations Board on July 7, 1938.

(b) Respondent's exceptions to decision, and order filed July 16, 1938.

(c) Intervenors' objections to the decision, and order issued by the National Labor Relations Board on July 7, 1938, and motion to amend said decision and order, filed August 4, 1938.

(d) Order overruling aforesaid exceptions and objections, and denying aforesaid motion issued by the National Labor Relations Board August 23, 1938.

(e) Notice to vacate and set aside findings of fact, conclusions of law and order, and granting right to file objections and apply for oral argument, dated March 16, 1939.

(f) Order vacating and setting aside findings of fact and conclusions of law, order and direction of election issued by National Labor Relations Board April 11, 1939.

(2) The following exhibits are hereby designated, and shall be printed:

Board Exhibits Nos. 12, 13 and 14, together with key number schedule for said exhibits.

To the description of Board's Exhibit No. 10, which the Board has designated to be described in the record as

"Board Exhibit No. 10 is identical with the exhibit annexed to respondent's answer, except that the signatures of the parties to the contract are filled in,"

add the following words:

"and it is dated May 20, 1937."

(3) From the records and files of the United States Circuit Court of Appeals for the Sixth Circuit, which are not in the transcript, the following are hereby designated and shall be printed:

(a) The notice and motion of National Labor Relations Board to dismiss petitions to review and set aside an order of the Board, filed in the United States Circuit Court of Appeals in the case of Electric Vacuum Cleaner Company, Inc. Petitioner, v. National Labor Relations Board, Respondent, No. 8206, and International Molders' Union of North America, Local No. 430, Patternmakers' Association of Cleveland and Vicinity, International Association of Machinists, District No. 54, Metal Polishers' International Union, Local No. 3, and Federal Labor Union, No. 18907, all affiliated with the American Federation of Labor, Petitioners, v. National Labor Relations Board, Respondent, No. 8224, omitting from said motion Exhibits A and C, both of which exhibits are copies of papers included above in this designation, Exhibit A being a copy of 1-(e) and Exhibit C being a copy of 1-(f), and may be so described in the printed record.

(b) Order entered by United States Circuit Court of Appeals for the Sixth Circuit, May 9, 1939, granting the above motion, and dismissing said petitions.

Dated this 23rd day of September, 1940.

Respectfully submitted,

Speith, Taggart, Spring & Annat,
Counsel for Electric Vacuum Cleaner Company, Inc., Respondent,
1568 Union Commerce Bld.
Cleveland, Ohio.

Of Counsel
L. C. Speith.
H. A. Spring.

NOTICE

Copies of the above were this day sent by registered mail to National Labor Relations Board, Washington, D. C.; Charles Fahy, General Counsel for Petitioner, Washington, D. C.; and Joseph A. Padway, Counsel for International Molders' Union of North America, Local No. 430, Patternmakers' Association of Cleveland and Vicinity, International Association of Machinists District No. 54, Metal Polishers' International Union, Local No. 3, and Federal Labor Union, No. 18907, Intervenors, Washington, D. C.

Speith, Taggart, Spring & Annat,
Counsel for Respondent.

CERTIFICATE OF THE NATIONAL LABOR RELATIONS BOARD

The National Labor Relations Board, by its Acting Secretary, duly authorized by Section 1 of Article VI, Rules and Regulations of the National Labor Relations Board, Series 2, as amended, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record in a proceeding had before said Board entitled, "In the Matter of Electric Vacuum Cleaner Company, Inc. and United Electrical & Radio Workers of America, Local 720," the same being Case No. C-266 before said Board, such transcript including the pleadings, testimony and evidence upon which the order of the Board in said proceeding was entered, and including also findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

(1) Charge filed by United Electrical & Radio Workers of America, sworn to April 22, 1937.

Certificate of National Labor Relations Board

(2) Copy of order of consolidation issued by the National Labor Relations Board on May 11, 1937.

(3) Complaint and notice of hearing issued by the National Labor Relations Board on May 21, 1937.

(4) Certified order designating William P. Ringer Trial Examiner for the National Labor Relations Board, dated May 26, 1937.

(5) Respondent's motion to make complaint more definite and certain and to extend time in which to file answer.

(6) Amended complaint and notice of hearing issued by the National Labor Relations Board on May 28, 1937.

(7) Copy of telegraphic notice of postponment of hearing, dated June 2, 1937.

(8) Respondent's answer to amended complaint, sworn to June 4, 1937.

(9) Copy of telegraphic notice of postponement of hearing, dated June 5, 1937.

(10) Motion to intervene sworn to June 7, 1937, filed by Metal Polishers' International Union No. 3, International Asociation of Machinists, District No. 54, International Molders Union of North America No. 420, and Federal Labor Union No. 18907.

Documents listed hereinabove under items 1-10, inclusive are contained in the exhibits and included under the following item:

(11) Stenographic transcript of testimony before William P. Ringer, Trial Examiner for the National Labor Relations Board on June 10, 11, 15, 16, 17, and 18, 1937, together with all exhibits introduced in evidence.

(12) Copy of order transferring proceeding to the National Labor Relations Board issued by the National Labor Relations Board on November 1, 1937.

(13) Copy of letter, dated June 10, 1938, to all parties, granting right to apply for oral argument.

(14) Copy of decision, findings of fact, conclusions of law and order issued by the National Labor Relations Board on July 7, 1938.

(15) Copy of respondent's exceptions to decision and order, filed July 16, 1938.

(16) Copy of intervenors' objections to decision and order, and motion to vacate and set aside or to amend said decision and order, filed August 4, 1938.

(17) Copy of order overruling aforesaid exceptions and objections and denying aforesaid motions issued by the National Labor Relations Board on August 23, 1938.

(18) Copy of notice to vacate and set aside aforesaid findings of fact, conclusions of law and order, and granting right to file objections and to apply for oral argument, dated March 16, 1939.

(19) Copy of order vacating and setting aside findings of fact, conclusions of law and order issued by the National Labor Relations Board on April 11, 1939.

(20) Copy of order directing issuance of proposed findings of fact, conclusions of law and order, and granting right to file exceptions, and to request oral argument and permission to file briefs issued by the National Labor Relations Board on June 21, 1939.

(21) Copy of proposed findings of fact, conclusions of law and order issued by the National Labor Relations Board on June 21, 1939.

(22) Copy of intervenors' exceptions to proposed findings of fact, conclusions of law and order, and request for oral argument, dated July 5, 1939.

(23) Copy of respondent's exceptions to proposed findings of fact, conclusions of law and order, dated July 7, 1939.

(24) Copy of respondent's letter, dated July 7, 1939, requesting oral argument.

(25) Copy of notice of hearing for the purpose of oral argument, dated August 2, 1939.

(26) Copy of notices of postponment of hearing, dated August 3, 1939, August 18, 1939, and August 24, 1939.

(27) Copy of list of appearances at oral argument held September 14, 1939.

(28) Copy of decision, findings of fact, conclusions of law and order issued by the National Labor Relations

Board on December 21, 1939, together with affidavit of service and United States Post Office return receipts thereof.

(29) Copy of order correcting decision and order, dated December 21, 1939, issued by the National Labor Relations Board on March 13, 1940, together with affidavit of service and United States Post Office return receipts thereof.

IN TESTIMONY WHEREOF the Acting Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set her hand and affixed the seal of the National Labor Relations Board in the City of Washington, District of Columbia, this 5th day of September, 1940.

(Seal)

Beatrice M. Stern,
Acting Secretary.
National Labor Relations Board.

UNITED STATES OF AMERICA

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

Eighth Region

In the Matter of The Electric Vacuum Cleaner Co. and United Electrical & Radio Workers of America.	Case No. VIII-C-73

CHARGE

(Received April 22, 1937)

Pursuant to Section 10(b) of the National Labor Relations Act, the undersigned hereby charges that The Electric Vacuum Cleaner Company, Cleveland, Ohio, has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (3) & (5) of said Act, in that The Electric Vacuum Cleaner Company early in March, 1937, embarked upon a program of discouraging employes from joining Local 720, United Electrical & Radio Workers of America; in that the company refused to bargain collectively with Local 720 on March 19, 1937, and at all times thereafter although said Local 720 represented a majority of the employes of the company at that time; in that on March 16, 1937, agents of the Cleveland Federation of Labor solicited employes to join their unions, stating that refusal would result in discharge, said activity being with the sanction of the company; that the company closed its plant March 19, 1937, in order to discourage employes from joining said Local 720, and thereafter refused to re-employ any employe unless said employe became a member of the Cleveland Federation of Labor; that the company re-opened its plant April 5, 1937, hiring only those who were members of the Cleveland

Charge

Federation of Labor, including many who had never before worked at the plant, at the same time refusing employment to those employes who would not or could not join the Cleveland Federation of Labor; that the company thus discriminated against many employes, and has refused to re-employ some fifty employes, beginning with March 19, 1937, for union activities.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

United Electrical & Radio Workers of America,
James Pascoe,
1002 E. 149th St., Cleveland, Ohio.

Subscribed and sworn to before me this 22nd day of April, 1937.

Elizabeth A. Wells,
Notary Public.

My Commission expires February 20, 1938.

COMPLAINT

It having been charged by the United Electrical & Radio Workers of America, Local 720 (hereinafter called the C. I. O. union) that the Electric Vacuum Cleaner Company, Inc. (hereinafter called the respondent), has engaged in and is now engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act (49 Stat. 449), the National Labor Relations Board, by its Regional Director for the Eighth Region as agent of the National Labor Relations Board designated by National Labor Relations Board Rules and Regulations, Series 1, as amended, hereby alleges the following:

1. The respondent is and has been since March 8, 1919, a corporation organized under and existing by virtue of the laws of the State of New York, having its principal office and place of business in the City of Cleveland, County of Cuyahoga, and State of Ohio, and is now and has continuously been engaged at a place of business in the City of Cleveland, County of Cuyahoga, State of Ohio, hereinafter called the plant, in the manufacture, sale and distribution of electrical vacuum cleaners.

2. The respondent is affiliated with the General Electric Company; operates the vacuum cleaner department of the Edison Electric Appliance Company of Chicago, Ill.; controls the Premier Vacuum Cleaner Company, Ltd., of Toronto, Canada; and has branches in over one hundred important cities in the United States and Canada.

3. The respondent, in the course and conduct of its business, causes and has continuously caused a large part of the raw materials used in the manufacture of its products to be purchased and transported in interstate commerce from and through states of the United States other than the State of Ohio to the plant in the State of Ohio, and causes and has continuously caused the products manufactured by it to be sold and transported in interstate commerce from the plant in the State of Ohio to, into and through states of the United States other than the State of Ohio, all of the aforesaid constituting a continu-

ous flow of trade, traffic and commerce among the several states.

4. The United Electrical & Radio Workers of America, Local 720, is a labor organization within the meaning of Section 2, subdivision (5) of the National Labor Relations Act.

5. The employees in the production and maintenance departments at the plant of respondent, except those employees in clerical and supervisory positions, constitute a unit appropriate for the purposes of collective bargaining in order to insure to the employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of the Act, within the meaning of Section 9(b) of said Act.

6. On and before March 19, 1937, a majority of the employees in said unit had designated the C. I. O. union as their representative for the purposes of collective bargaining with the respondent, such designation having been made by membership therein and otherwise. At all times since March 19, 1937, said C. I. O. union has been the representative for collective bargaining of a majority of the employees in said unit and has by virtue of Section 9 (a) of said Act, been the exclusive representative of all employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.

7. On or about March 19, 1937, April 1, 1937, and April 2, 1937, and at other times before such dates, and thereafter, while the respondent was engaged at the plant as described above, the C. I. O. union requested the respondent to bargain collectively in respect to rates of pay, wages, hours of employment and other conditions of employment with the C. I. O. union as the exclusive representative of the employees in said unit. On said dates, and at all times before such dates and thereafter, the respondent did refuse and has refused and does now refuse to bargain collectively with the C. I. O. union as the exclusive representative of all the employees in said unit, in that it refused to meet and/or negotiate with the representatives duly designated for that purpose by the C. I.

O. union, and in that it did state that it will bargain onl with Metal Polishers International Union, Local No. 3 International Association of Machinists, District No. 54 International Molders Union of North America, Local No 430; Pattern Makers Association of Cleveland and vi cinity; and Federal Labor Union No. 18907, as the repre sentatives of its employees.

8. Said acts of the respondent enumerated in para graph 7 above, constitute unfair labor practices within the meaning of Section 8, subdivision (5) of said Act.

9. The respondent, by its officers and agents, on the 16th day of March, 1937, and at various times thereafter, did interfere with, restrain, and coerce its employees in their right to self-organization; did coerce, intimidate and/or acquiesce in the coercion and intimidation of its employees; did threaten to discharge and/or acquiesced in threats to discharge employees who refused to join the labor organizations chosen by the respondent; did subject its employees to acts of physical interference, duress and coercion; did utter, publish and/or permit to be uttered and published certain statements, advertisements and declarations of intentions to close its plants; and did on the 19th day of March, 1937, close its plant; all of which did have the purpose, intent and effect of intimidating, coercing, restraining and/or interfering with the lawful exercise of the rights of its employees guaranteed in Section 7 of the Act.

10. The respondent, on April 5, 1937, while engaged at the plant as described above, did refuse to reinstate about five hundred fifty employees, and each of them, all of whom were employed by the respondent at the plant. On or about April 5, 1937, and at various times thereafter, the respondent did employ in its production and maintenance departments certain persons not theretofore employed by respondent in said departments, and did recall to employment certain of the five hundred fifty employees who had been required to cease work as aforesaid, but on or about such date, and at all times thereafter, failed or refused to recall to employment about fifty of the five hundred fifty employees who had been required to cease

work as aforesaid, and has thereby discharged said employees, and each of them.

11. The respondent refuses to reinstate said employees, and each of them, for the reason that said employees, and each of them, joined and assisted the labor organization referred to above as the C. I. O. union, and engaged in concerted activities with other employees in the plant for the purpose of collective bargaining and other mutual aid and protection.

12. By the refusal to reinstate the said employees, and each of them, as above set forth, the respondent did discriminate and is discriminating in regard to the hire and tenure of employment of the said employees, and each of them, and did discourage and is discouraging membership in the C. I. O. union and did thereby engage in and is engaging in unfair labor practices within the meaning of Section 8, subdivision (3) of said Act.

13. By all of said acts, and each of them, enumerated in paragraph 9 above; by the refusal to reinstate the said employees, and each of them, enumerated in paragraphs 10 and 11 above; by the refusal to meet, negotiate and bargain collectively with the C. I. O. union enumerated in paragraphs 7 and 8 above, the respondent did interfere with, restrain and coerce, and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, and by all of said acts and each of them did engage in and is engaging in unfair labor practices within the meaning of Section 8, subdivision (1) of said Act.

14. The activities of respondent set forth in paragraphs 7, 8, 9, 10, 11 and 12 above, occurring in connection with the operations of respondent described in paragraphs 1, 2 and 3 above, have a close, intimate and substantial relation to trade, traffic and commerce among the several states, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

15. The aforesaid acts of respondent as hereinbefore described constitute unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1), (3) and (5) and Section 2, subdivisions (6) and (7) of said Act.

Wherefore, the National Labor Relations Board on the 21st day of May, 1937, issues its complaint against Electric Vacuum Cleaner Company, Inc., respondent herein.

NOTICE OF HEARING

Please Take Notice that on the 1st day of June, 1937, at ten o'clock in the forenoon at Court Room No. 2, County Court House, Cleveland, Ohio, a hearing will be conducted before the National Labor Relations Board by a Trial Examiner to be designated by it in accordance with its Rules and Regulations, Series 1 as amended, Article IV, Section 2, and Article II, Section 23, on the allegations set forth in the above complaint, at which time and place you will have the right to appear, in person or otherwise, and give testimony.

You are further notified that you have the right to file with the Regional Director for the Eighth Region, acting in this matter as the agent of the National Labor Relations Board, an answer to the above complaint, within five (5) days of service of said complaint.

Enclosed herewith for your information is a copy of Rules and Regulations, Series 1 as amended, made and published by the National Labor Relations Board pursuant to authority granted in the National Labor Relations Act. Your attention is particularly directed to Article II of said Rules and Regulations.

In Witness Whereof the National Labor Relations Board has caused this, its complaint and notice of hearing to be signed by the Regional Director for the Eighth Region on the 21st day of May, 1937.

Ralph A. Lind,
Regional Director for the 8th Region.

N. L. R. B. Rules and Regulations, Series 1, as amended, annexed.

BOARD'S EXHIBIT No. 1

CERTIFICATE OF NATIONAL LABOR RELATIONS BOARD

I, Benedict Wolf, Secretary of the National Labor Relations Board, and official custodian of its records, do hereby certify that attached is a full, true, and complete copy of:

Order Designating Trial Examiner, In the Matter of Electric Vacuum Cleaner Co. Inc., and United Electrical and Radio Workers of America, Local 720—Case VIII-C-73.

In Witness Whereof, I have hereunto subscribed my name and caused the seal of the National Labor Relations Board to be affixed this 26th day of May, A. D. 1937, at Washington, D. C.

Benedict Wolf,
Secretary.

(Seal)

ORDER DESIGNATING TRIAL EXAMINER

At a regular meeting of the National Labor Relations Board held at its office in the City of Washington, D. C., on the 26th day of May, 1937.

Present:

J. Warren Madden, Chairman.
Donald Wakefield Smith.
Edwin S. Smith.

A charge having been filed in this matter, and it having appeared to the Regional Director of the 8th Region that a proceeding in respect thereto should be instituted, and the Board having considered the matter and being advised in the premises,

It Is Hereby Ordered that William P. Ringer act as Trial Examiner in the above case and perform all the duties and exercise all the powers granted to trial examiners under the Rules and Regulations—Series 1, as amended, of the National Labor Relations Board.

By direction of the Board:

Benedict Wolf,
Secretary.

United States of America

Before the

NATIONAL LABOR RELATIONS BOARD

Eighth Region

In the Matter of Electric Vacuum Cleaner Company, Inc., and United Electrical and Radio Workers of America.	Case Nos. VIII-C-73 R-15

MOTION BY ELECTRIC VACUUM CLEANER COMPANY, INC.

Now comes Electric Vacuum Cleaner Company, Inc., by its attorneys, Cannon, Speith, Taggart, Spring and Annat, and moves for an order requiring the complaint filed in case No. VIII-C-73 to be made more definite and certain, by setting forth the names of the employees who, in paragraph No. 10 of the complaint, it is alleged the respondent failed or refused to recall to employment and were thereby discharged.

It is further moved that respondent's time to answer in case No. VIII-C-73 be extended to such appropriate time as will permit it to file its answer, after being advised of the names of said employees, and that the hearing in said case and in case No. VIII-R-15 be postponed to a convenient date subsequent to June 1, 1937.

For cause of said motion Electric Vacuum Cleaner Company, Inc. respectfully urges that unless it is definitely informed of the identity of said employees referred to in paragraph No. 10 of the complaint who it is alleged were not recalled to employment and were thereby discharged, it cannot properly draft its answer to the complaint or prepare for and safely proceed to trial.

Electric Vacuum Cleaner Company, Inc.,
By Cannon, Spieth, Taggart, Spring & Annat,
Its Attorney.
1568 Union Trust Bldg.,
Cleveland, Ohio.

United States of America

Before the

NATIONAL LABOR RELATIONS BOARD

Eighth Region

In the Matter of Electric Vacuum Cleaner Company, Inc., and United Electrical and Radio Workers of America, Local 720.	Case No. VIII-C-73

AMENDED COMPLAINT

It having been charged by the United Electrical & Radio Workers of America, Local 720, (Hereinafter called the C. I. O. union) that the Electric Vacuum Cleaner Company, Inc., (hereinafter called the respondent) has engaged in and is now engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act (49 Stat. 449), the National Labor Relations Board, by its Regional Director for the Eighth Region as agent of the National Labor Relations Board designated by National Labor Relations Board Rules and Regulations, Series 1, as amended, hereby alleges the following:

1. The respondent is and has been since March 8, 1919 a corporation organized under and existing by virtue of the laws of the State of New York, having its principal office and place of business in the City of Cleveland, County of Cuyahoga, and State of Ohio, and is now and has continuously been engaged at a place of business in the City of Cleveland, County of Cuyahoga, State of Ohio, hereinafter called the plant, in the manufacture, sale and distribution of electric vacuum cleaners.

Amended Complaint

2. The respondent is affiliated with the General Electric Company; operates the vacuum cleaner department of the Edison Electric Appliance Company of Chicago, Ill.; controls the Premier Vacuum Cleaner Company, Ltd., of Toronto, Canada; and has branches in over one hundred important cities in the United States and Canada.

3. The respondent, in the course and conduct of its business, causes and has continuously caused a large part of the raw materials used in the manufacture of its products to be purchased and transported in interstate commerce from and through states of the United States other than the State of Ohio to the plant in the State of Ohio, and causes and has continuously caused the products manufactured by it to be sold and transported in interstate commerce from the plant in the State of Ohio to, into and through states of the United States other than the State of Ohio, all of the aforesaid constituting a continuous flow of trade, traffic and commerce among the several states.

4. The United Electrical & Radio Workers of America, Local 720, is a labor organization within the meaning of Section 2, subdivision (5) of the National Labor Relations Act.

5. The employees in the production and maintenance departments at the plant of respondent, except those employees in clerical and supervisory positions, constitute a unit appropriate for the purposes of collective bargaining in order to insure to the employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of the Act, within the meaning of Section 9 (b) of said Act.

6. On and before March 19, 1937, a majority of the employees in said unit had designated the C. I. O. union as their representative for the purposes of collective bargaining with the respondent, such designation having been made by membership therein and otherwise. At all times since March 19, 1937, said C. I. O. union has been the representative for collective bargaining of a majority of the employees in said unit and has by virtue of Section 9 (a) of said Act, been the exclusive representative of all employees in such unit for the purposes of collec-

tive bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.

7. On or about March 19, 1937, April 1, 1937, and April 2, 1937, and at other times before such dates, and thereafter, while the respondent was engaged at the plant as described above, the C. I. O. union requested the respondent to bargain collectively in respect to rates of pay, wages, hours of employment and other conditions of employment with the C. I. O. union as the exclusive representative of the employees in said unit. On said dates, and at all times before such dates and thereafter, the respondent did refuse and has refused and does now refuse to bargain collectively with the C. I. O. union as the exclusive representative of all the employees in said unit, in that it refused to meet and/or negotiate with the representatives duly designated for that purpose by the C. I. O. union, and in that it did state that it will bargain only with Metal Polishers International Union, Local No. 3; International Association of Machinists, District No. 54; International Molders Union of North America, Local No. 430; Pattern Makers Association of Cleveland and Vicinity; and Federal Labor Union No. 18907, as the representatives of its employees.

8. Said acts of the respondent enumerated in paragraph 7 above, constitute unfair labor practices within the meaning of Section 8, subdivision (5) of said Act.

9. The respondent, by its officers and agents, on the 16th day of March, 1937, and at various times thereafter, did interfere with, restrain, and coerce its employees in their right to self-organization; did coerce, intimidate and/or acquiesce in the coercion and intimidation of its employees; did threaten to discharge and/or acquiesced in threats to discharge employees who refused to join the labor organizations chosen by the respondent; did subject its employees to acts of physical interference, duress and coercion; did utter, publish and/or permit to be uttered and published certain statements, advertisements and declarations of intentions to close its plants; and did on the 19th day of March, 1937, close its plant; all of which did have the purpose intent and effect of intimidating, coerc-

ing, restraining and or interferring with the lawful exercise of the rights of its employees guaranteed in Section 7 of the Act.

10. The respondent, on April 5, 1937, while engaged at the plant as described above, did refuse to reinstate about five hundred and fifty employees, and each of them, all of whom were employed by the respondent at the plant. On or about April 5, 1937, and at various times thereafter, the respondent did employ in its production and maintenance departments certain persons not theretofore employed by respondent in said departments, and did recall to employment certain of the five hundred fifty employees who had been required to cease work as aforesaid, but on or about such date, and at all times thereafter, failed or refused to recall to employment the following twenty-eight employees who had been required to cease work as aforesaid and has thereby discharged said employees, and each of them: Harold Keehl, John Kern, Frank Erzen, Steve Dragosa, Alfred Meissner, Arthur Kruse, Joseph Macho, John Masters, Mitchel France, James Mitchell, Edward Koutnik, Fred Frank, William Fogarty, George Onda, Arthur Troyan, Theodore Vitosky, William Behrse, Leo Pierret, Nicholas Kozma, Austin Ballard, Frank Hunek, Edward Rericha, Mike Smith, Howard Lowrance, Jewel Smith, Rudolph Rummel, Joe Washko, William Krall.

11. The respondent refuses to reinstate said employees, and each of them, for the reason that said employees, and each of them, joined and assisted the labor organization referred to above as the C. I. O. union, and engaged in concerted activities with other employees in the plant for the purpose of collective bargaining and other mutual aid and protection.

12. By the refusal to reinstate the said employees, and each of them, as above set forth, the respondent did discriminate and is discriminating in regard to the hire and tenure of employment of the said employees, and each of them, and did discourage and is discouraging membership in the C. I. O. union and did thereby engage in and is

engaging in unfair labor practices within the meaning of Section 8, subdivision (3) of said Act.

13. By all of said acts, and each of them, enumerated in paragraph 9 above; by the refusal to reinstate the said employees, and each of them, enumerated in paragraphs 10 and 11 above; by the refusal to meet, negotiate and bargain collectively with the C. I. O. union enumerated in paragraphs 7 and 8 above, the respondent did interfere with, restrain and coerce, and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, and by all of said acts and each of them did engage in and is engaging in unfair labor practices within the meaning of Section 8, subdivision (1) of said Act.

14. The activities of respondent set forth in paragraphs 7, 8, 9, 10, 11 and 12 above, occurring in connection with the operations of respondent described in paragraphs 1, 2, and 3 above, have a close, intimate and substantial relation to trade, traffic and commerce among the several states, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

15. The aforesaid acts of respondent as hereinbefore described constitute unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1), (3) and (5) and Section 2, subdivisions (6) and (7) of said Act.

Wherefore, the National Labor Relations Board on the 28th day of May, 1937 issues its amended complaint against Electric Vacuum Cleaner Company, Inc., respondent herein.

NOTICE OF HEARING

Please Take Notice that on the 3rd day of June, 1937, at ten o'clock in the forenoon at Court Room No. 2, County Court House, Cleveland, Ohio, a hearing will be conducted before the National Labor Relations Board by a Trial Examiner to be designated by it in accordance with its Rules and Regulations, Series 1 as amended, Article IV, Section 2, and Article II, Section 23, on the allegations set forth in the above amended complaint, at which time

and place you will have the right to appear, in person or otherwise, and give testimony.

You are further notified that you have the right to file with the Regional Director for the Eighth Region, acting in this matter as the agent of the National Labor Relations Board, an answer to the above amended complaint, within five (5) days of service of said amended complaint.

Enclosed herewith for your information is a copy of Rules and Regulations, Series 1 as amended, made and published by the National Labor Relations Board pursuant to authority granted in the National Labor Relations Act. Your attention is particularly directed to Article II of said Rules and Regulations:

In Witness Whereof the National Labor Relations Board has caused this, its amended complaint and notice of hearing to be signed by the Regional Director for the Eighth Region on the 28th day of May, 1937.

Ralph A. Lind,
Regional Director for the 8th Region.

ANSWER TO AMENDED COMPLAINT

Now comes Electric Vacuum Cleaner Company, Inc., the respondent, and for its answer to the amended complaint filed herein says that:

(1) It admits that it is a corporation organized, existing, having its place of business, and engaged in the manufacture, sale and distribution of electric vacuum cleaners, as alleged in paragraph 1 of the amended complaint.

(2) It denies that it is affiliated with General Electric Company, but said company is the owner and holder of approximately one-third of the capital stock of respondent. It denies that it operates the vacuum cleaner department of the Edison Electric Appliance Company of Chicago, Illinois. It admits that it controls the Premier Vacuum

Cleaner Company, Ltd. of Toronto, Canada, and has branches in important cities in the United States and Canada.

(3) It admits that in the course and conduct of its business it purchases and transports raw materials, and sells and transports its manufactured products, as alleged in paragraph 3 of the amended complaint.

(4) It is not informed as to whether or not United Electrical & Radio Workers of America, Local 720, is a labor organization within the meaning of Section 2, Subdivision 5 of the National Labor Relations Act.

(5) It admits that the employees in its production and maintenance department, except those employees in clerical and supervisory positions, constitute a unit appropriate for the purpose of collective bargaining, as alleged in paragraph 5 of the amended complaint.

(6) It denies that on or before March 19, 1937, a majority of its employees had designated said the C. I. O. Union as their representative for the purposes of collective bargaining with respondent, and that at all times since, said C. I. O. Union has been the representative for collective bargaining of a majority of the employees, and has, by virtue of Section 9 (a) of the National Labor Relations Act, been the exclusive representative of all its employees for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment, as alleged in paragraph 6 of the amended complaint.

(7) It denies that on or about March 19, 1937, April 1, 1937, and April 2, 1937, and at other times before such dates, and thereafter, said C. I. O. Union requested respondent to bargain collectively in respect to rates of pay, wages, hours of employment, and other conditions of employment with it as the exclusive representative of respondent's employees, as alleged in said paragraph 7 of said amended complaint, but says that said C. I. O. Union, at various times, subsequent to March 19, 1937, made claim that a majority of respondent's employees "have resigned their memberships from the various Local or Federal Unions," (with which Unions as representatives of all its

employees, respondent then had a "closed shop" contract); "have affiliated themselves with" said C. I. O. Union; that "the American Federation of Labor does not represent the employees affiliated with" said C. I. O. Union, and demanded the right to "negotiate a settlement of any grievances which affect" its members.

It admits that it has refused to enter into negotiations with said C. I. O. Union, and that it did state that it would negotiate only with Metal Polishers' International Union, Local No. 3, International Association of Machinists, District No. 54, International Molders Union of North America, Local No. 430, Pattern Makers Association of Cleveland and Vicinity, and Federal Labor Union No. 18907, giving as its reason for such refusal that by a contract then in full force and effect between said Unions and respondent, said Unions by the majority of respondent's employees, had been designated as the duly chosen agents for collective bargaining for all respondent's employees, as hereinafter more fully set forth in this answer.

(8) It denies that it has been guilty of acts constituting unfair labor practices as alleged in paragraph 8 of the amended complaint.

(9) It denies that by its officers and agents, on the 16th day of March, 1937, and at various times thereafter, it interfered with, restrained and coerced its employees in their right to self-organization, or acquiesced therein; that it threatened to discharge and/or acquiesced in threats to discharge employees who refuse to join labor organizations chosen by respondent, and that it subjected its employees to acts of physical interference, duress and coercion, or uttered or published advertisements or declarations with the intent or purpose of intimidating, coercing and/or interfering with the lawful exercise of the rights of its employees, guaranteed by Section 7 of the Act, as alleged in paragraph 9 of the amended complaint.

(10) It denies that on April 5, 1937, it refused to reinstate about five hundred and fifty (550) employees, but says that on or about April 5, 1937, upon reopening its plant, it called all of its employees to return to work, and to take the places of such of its old employees who did

not return to work, it employed persons not theretofore employed. It denies that it failed or refused to recall to employment, and thereby discharged, the persons named in paragraph 10 of the amended complaint.

(11) It denies that it refused to reinstate any of its employees for the reason that they had joined and assisted said C. I. O. Union to engage in concerted activities with other employees in its plant, for the purpose of collective bargaining and other mutual aid and protection, as alleged in paragraph 11 of the amended complaint.

(12) It denies that it discriminated, and is discriminating, in regard to the hire and tenure of employment of its employees; that it is discouraging membership in said C. I. O. Union; that it is engaging in unfair labor practices within the meaning of Section 8, Subdivisions 1, 3 and 5, and Section 2, Subdivisions 6 and 7 of said Act, and that any acts on its part tend to lead to labor disputes, burdening and obstructing commerce and the free flow of commerce, as alleged in paragraphs 12, 13, 14 and 15 of said amended complaint.

(13) Further answering, respondent says that on June 23, 1935, it entered into a contract with Metal Polishers' International Union, Local No. 3, International Association of Machinists, District No. 54, International Molders Union of North America, Local No. 430, Pattern Makers Association of Cleveland and Vicinity and Federal Labor Union No. 18907, which Local or Federal Unions were, and still are, so respondent is informed and believes, affiliated with the American Federation of Labor, and are labor organizations within the meaning of Section 2, Subdivision 5 of the National Labor Relations Act. Hereinafter in this answer said Unions will be referred to as "American Federation of Labor Unions." Respondent agreed to make said contract, provided said American Federation of Labor Unions then represented the majority of its employees, and, so respondent is informed and believes, six hundred and ten (610) employees, out of a total of eight hundred and one (801) being members of said Unions, respondent recognized said American Federation of Labor Unions as the duly chosen agents for collective

bargaining for all its employees during the term of said contract, to-wit, until June 23, 1936. As part of said contract, respondent notified its employees that employees attempting to interfere with respondent's contract with said American Federation of Labor Unions would be discharged and that any employees not then a member of any union was not required by respondent to join a union, but in the future, only members of said American Federation of Labor Unions would be employed.

(14) On July 6, 1936, the contract above referred to in paragraph (13), having expired, a new contract, effective as of June 24, 1936, and to expire June 23, 1937, was made with said American Federation of Labor Unions, which new contract was the same as the first contract, except that it provided that employees related to foremen should not work in the department under such foremen. Said second contract was likewise made on condition that said Unions then represented a majority of respondent's employees, and at the time of the making of said second contract, so respondent is informed and believes, seven hundred and seventy-one (771) employees out of a total of eight hundred and eleven (811) were members of said American Federation of Labor Unions. Respondent is informed by said American Federation of Labor Unions that the majority of its employees have at all the times in this answer referred to, been members of said Unions.

(15) On March 20, 1937, said American Federation of Labor Unions served written notice upon respondent that "As the bargaining agent for your employees we request you to temporarily close your plant, pending present negotiations with you relative to matters covered by our contract with you" and, complying with said notice, respondent closed its plant. Said plant remained closed until April 5, 1937, during which time respondent had numerous meetings with said American Federation of Labor Unions and discussed various disputes and agreed upon certain adjustments in wages, rates of pay and considered other grievances. At the time said plant was reopened, respondent published in various Cleveland papers, on April 3 and 4, 1937, the following notice:

"To the Employees of Electric Vacuum Cleaner Company, Inc.:

On July 6, 1936, at your request, the company entered into a contract which, among other things, provided that we recognize International Association of Machinists, District No. 54, Metal Polishers International Union No. 3, International Molders Union of North America No. 430, Pattern Makers Association of Cleveland and Vicinity, and Federal Labor Union No. 18907, Craft Organizations affiliated with the American Federation of Labor, as your duly chosen agents for collective bargaining, and thereafter, until June 23, 1937, it was agreed that we employ only persons affiliated with said crafts.

The membership cards signed by you authorize your Craft Organizations to represent you for a period of one year and thereafter, subject to thirty days' written notice of your desire to withdraw such authority.

The company has at all times been willing to carry out that contract, and, after conferences with your agents, is at their request resuming operations Monday morning, April 5, 1937, but only those employees who are members of the crafts under contract with us will be employed.

(Signed) Electric Vacuum Cleaner Company, Inc.,
By Julius Tuteur, President."

Upon reopening, the majority of respondent's employees reported promptly for work and were immediately put to work. The places of employees failing to report for work were filled by new employees, but thereafter, as such old employees returned and applied for work, they were given their former jobs as soon as it could be conveniently done, and such new employees were released.

(16) Between April 5 and May 20, 1937, respondent has had various meetings and negotiations respecting a new contract with said American Federation of Labor Unions, its then contract being due to expire on June 23, 1937, and a form of contract approved by said American

Federation of Labor Unions, and the various shop committees representing respondent's employees, was presented to respondent, and upon respondent stating that it was willing to enter into such contract, said American Federation of Labor Unions submitted the same to respondent's employees, and, as respondent is informed, nine hundred and ten (910) employees out of a total of one thousand and thirty-two (1032) approved said contract, each endorsing upon a printed copy thereof the following:

> "I, the undersigned, having read the above agreement, hereby approve the making of same by the Unions, and during the term covered by said agreement, and any renewal thereof, while I am in the employ of Electric Vacuum Cleaner Company, Inc., I irrevocably designate the Unions as my exclusive bargaining agent, and agree to abide by all of the terms and conditions of said agreement."

a copy of said agreement, in the form submitted to and approved by said employees, being attached hereto, made part hereof and marked "Exhibit A." The majority of respondent's employees having approved said contract, the same was executed by the parties thereto on May 20, 1937, and said contract is now in full force and effect.

(17) Respondent has at all times been willing that its employees have the right to self-organization, and to bargain collectively through representatives of their own choosing, as provided by Section 7 of the Act, and it has, to the best of its information and belief, duly recognized under its contracts the representatives designated or selected by the majority of its employees for the purposes of collective bargaining as the exclusive representatives of all its employees, as provided by Section 9 (a) of the Act. In such contracts with its employees, however, as it is permitted to do by Section 8, Paragraph 3 of the Act, it requires as a condition of employment, membership in said American Federation of Labor Unions, such organizations being the representatives of respondent's employees, as

provided in said Section 9 (a) of the Act in the appropriate bargaining unit covered by such contracts when made.

(18) Further answering, respondent says that under said Act it cannot enter into negotiations with any group purporting to bargain for all its employees in preference to the actual representatives designated or selected for such purposes by a majority of its employees, and inasmuch as at all the times complained of in the amended complaint, respondent had contracts with said American Federation of Labor Unions, designating said Unions as the duly chosen bargaining agents, and said Unions, so respondent is informed, and therefore believes, at all times represented a majority of respondent's employees, respondent was required to and did refuse to bargain collectively with any but said American Federation of Labor Unions, never refusing, however, to permit any individual employee, or group of employees, to present grievances.

(19) Further answering, respondent denies each and every allegation in said amended complaint, not herein specifically admitted, qualified or denied.

Therefore, respondent, having fully answered, prays that it may go hence with its costs.

Electric Vacuum Cleaner, Inc.
Respondent.

State of Ohio, }
Cuyahoga County, } ss.

R. B. Wilson, being duly sworn, deposes and says that he is vice-president of Electric Vacuum Cleaner Company, Inc., the respondent; that he has read the foregoing answer and that it is true to his own knowledge, except as to matters therein stated to be on information and belief, and that as to those matters he believes it to be true.

R. B. Wilson.

Subscribed and sworn to before me by the said R. B. Wilson this 4th day of June, 1937.

J. E. Splettorf,
(Seal) Notary Public.

EXHIBIT A

AGREEMENT.

This Agreement made and entered into at East Cleveland, Ohio, this.....day of....., 1937, by and between Electric Vacuum Cleaner Company, Inc., hereinafter referred to as the Employer and the following named organizations, and each of them, affiliated with the American Federation of Labor, to-wit:

Metal Polishers' International Union, Local No. 3,
International Association of Machinists, District No. 54,
International Molders Union of North America, Local No. 430,
Pattern Makers Association of Cleveland and and Vicinity,
Federal Labor Union No. 18907.

hereinafter referred to as the Unions, which Unions the Employer hereby recognizes as, and agrees to bargain with as the representative of its employees, (including supervisors using tools,) for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

ARTICLE I.

(a) Five (5) consecutive days of eight (8) hours each, exclusive of a thirty (30) minute lunch period; Monday, Tuesday, Wednesday, Thursday and Friday; shall constitute a week's work.

(b) Overtime shall not be worked except in cases of emergency, maintenance, and repair work which cannot be performed during the regular schedule of hours.

(c) Worked performed on Saturdays and the first four (4) hours of overtime in any one day shall be paid for at the rate of time and one-half, and overtime in excess of four (4) hours in any one day shall be paid for at the rate of double time; provided however, that all work performed, except by Firemen and Watchmen, on Sundays, New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, or Christmas Day shall be paid for at the rate of double time, irrespective of the number

of hours worked. When any of the above holidays fall on Sunday, the day observed by the State or Nation shall be considered the holiday.

(d) When it becomes necessary for Employees to work overtime, they shall not be laid off during regular working hours to equalize the time.

ARTICLE II.

When Employees report for work at the regular starting time and are prevented from performing services that day by conditions beyond their control, such Employees shall be paid for actual time held with a minimum of three (3) hours, unless these Employees have been notified at their homes before the time they would normally leave for work.

ARTICLE III.

(a) When it becomes necessary to reduce expenses or reduce production in any department, the hours worked in such department shall be reduced to thirty-two (32) hours per week before the force is reduced.

(b) Hours of work in any department shall not be reduced below thirty-two (32) hours per week except by mutual consent of the Employees and the Management.

(c) The Employer agrees not to discriminate against any Employee because of his or her services as Shop Steward or Committee member.

(d) The Employer agrees to employ only members of the Unions in good standing in their respective Unions, and should the Employer require more employees than those now employed, the Employer will secure such employees through the Unions, if however, the Unions are unable to furnish such employees, the Employer may secure them elsewhere, it being understood, however, that such employees so secured shall become members of the Union.

(e) Seniority rights shall be forfeited after an absence of One (1) year, or if an Employee quits of his or her own accord, or is discharged for just cause, or refuses to return to work when called.

(f) A seniority list of Employees by Crafts shall be furnished the Business Representatives.

Exhibit A

(g) When hiring new help no one who is related to a foreman shall be assigned to duty under such foreman.

ARTICLE IV.

(a) Any Employee who believes that he or she has been unjustly treated shall complain to his or her Committeeman who shall take the complaint directly to the foreman, involved; failing in satisfactory adjustment with the foreman, the Committee member shall take the matter up directly with the proper Union officials for adjustment.

(b) No grievances shall be carried to the point where cessation of work takes place, either by voluntary act of the Employees or by order of the Employer, and the Unions will not cause, or permit their respective members, or any of them, to cause, nor will any member of the Unions take part in any sit-down or stay-in strike, or any slow-down strike, during the term of this agreement, and any dispute, whether involving matters covered by this contract or not, shall be carried through to conciliation by the parties involved.

This agreement shall be effective from and after its date for a period of one year, and thereafter from year to year, unless written notice of a contrary intention is given by either party to the other thirty (30) days prior to the expiration of any yearly period. Within ten (10) days after receipt of such notice, the parties to this agreement shall begin negotiations.

It is further stipulated that upon execution of this agreement, all preceding agreements between the parties hereto shall be and are terminated.

Dated at Cleveland, Ohio, this.....day of....., 1937.

I, the undersigned, having read the above agreement, hereby approve the making of same by the Unions, and during the term covered by said agreement, and any renewal thereof, while I am in the employ of Electric Vacuum Cleaner Company, Inc., I irrevocably designate the Unions as my exclusive bargaining agent, and agree to abide by all of the terms and conditions of said agreement.

Signed .....

Member of .....

UNITED STATES OF AMERICA

Before the

NATIONAL LABOR RELATIONS BOARD

Eighth Region

In the Matter of Electric Vacuum Cleaner Company, Inc., and United Electrical and Radio Workers of America.	Case Nos. VIII-C-73 VIII-R-15

MOTION BY METAL POLISHERS' INTERNATIONAL UNION No. 3, INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT No. 54, INTERNATIONAL MOLDERS UNION OF NORTH AMERICA No. 420, AND FEDERAL LABOR UNION No. 18907.

Now comes the Metal Polishers' International Union No. 3, International Association of Machinists, District No. 54, International Molders Union of North America No. 420 and Federal Labor Union No. 18907, by their attorneys, Woodle and Wachtel, and move for an order permitting the aforementioned unions to intervene in the above matter wherein the United Electrical and Radio Workers of America is the complainant and the Electric Vacuum Cleaner Company, Inc., is the respondent.

Your motioners respectfully allege that their respective organizations are members of the American Federation of Labor; that they and their duly authorized representatives have represented the majority of the workers employed by the respondent herein; that since the 23rd day of June, 1935, they have had closed shop agreements with the respondent herein, and that these agreements have been renewed annually since the 23rd day of June, 1935, and that a closed shop has been in effect at the plant of the respondent at all times herein mentioned.

Your motioners by their attorneys further state that they have ever since the 23rd day of June, 1935, represented a majority of all the workers of the Electric Vacuum Cleaner Company, Inc., and have continued to and still do at the present time represent a majority of all the workers of the Electric Vacuum Cleaner Company, Inc.

Your motioners further state that unless they be allowed to intervene in the complaint before the National Labor Relations Board, their rights as the duly authorized, proper and legal representatives may be seriously impaired, and that an injustice may be caused to the respective organizations requesting the right to intervene herein, and the majority of workers whom they represent and who have been and who are presently employed by the respondent herein.

Wherefore, your motioners respectfully request that an order be issued authorizing them to intervene on behalf of the respondent in the above numbered causes, both of which have been joined for the purposes of hearing.

Respectfully submitted,
Metal Polishers' International Union No. 3,
International Association of Machinists, District No. 54,
International Molders Union of North America, No. 420, and
Federal Labor Union No. 18907,
By Woodle & Wachtel,
Their Attorneys,
318 Leader Bldg.,
Main 6432

CERTIFICATION OF SERVICE

Bernard C. Wachtel, being first duly sworn deposes and says that he has this day served a copy of the foregoing motion in the above numbered causes upon the Electric Vacuum Cleaner Company, Inc., the respondent herein, by mailing them a copy by registered mail, and that he has duly served a copy of the foregoing motion upon the United Electrical and Radio Workers of America No. 720 by mailing a copy of the foregoing motion by registered mail to Mr. James Pascoe, 1002 East 149th Street, Cleveland, Ohio, complainant herein.

Further affiant sayeth not.

Sworn to before me and subscribed in my presence this 7th day of June, 1937.

Notary Public.

UNITED STATES OF AMERICA

Before the

NATIONAL LABOR RELATIONS BOARD

At a regular meeting of the National Labor Relations Board, held at its office in the City of Washington, D. C., on the 1st day of November, 1937.

Present:

J. Warren Madden, Chairman,
Edwin S. Smith.

In the Matter of

Electric Vacuum Cleaner Company, Inc.,
and
United Electrical and Radio Workers of America, Local 720.

Case No. C-266
R-353

ORDER TRANSFERRING PROCEEDING TO NATIONAL LABOR RELATIONS BOARD

A hearing having been duly held in this proceeding before a Trial Examiner duly appointed, and the Board deeming it necessary, in order to effectuate the purposes of the National Labor Relations Act, that the proceeding be transferred to and continued before it,

It Is Hereby Ordered in accordance with Section 37 of Article II of National Labor Relations Board Rules and Regulations—Series 1, as amended, that this proceeding be transferred to and continued before the Board.

By direction of the Board:

(s) Benedict Wolf,
Secretary.

DECISION, ORDER AND DIRECTION OF ELECTION

(Docketed July 7, 1938)

Mr. Harry L. Lodish, for the Board.
Mr. L. C. Speith and Mr. H. A. Spring, of Cleveland, Ohio, for the respondent.
Mr. Sam H. Griff, of Cleveland, Ohio, for the United.
Mr. Edwin F. Woodle and Mr. Bernard Wachtel, of Cleveland, Ohio, for the A. F. of L. Affiliates.
Mr. John H. Orgill, of Cleveland, Ohio, for the Cleveland Federation of Labor.
Miss Margaret B. Bennett, of counsel to the Board.

On April 22, 1937, United Electrical and Radio Workers of America, herein called the United, filed with the Regional Director for the Eighth Region (Cleveland, Ohio) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Electric Vacuum Cleaner Company, Inc., Cleveland, Ohio, herein called the respondent, and requesting an investigation and certification of representatives pursuant to Section 9(c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On the same day, the United filed with the Regional Director charges alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of the Act. On May 6, 1937, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered an investigation and authorized the Regional Director to conduct it and to provide an appropriate hearing upon due notice. On May 11, 1937, the Board, acting pursuant to Article III, Section 10 (c) (2) of said Rules and Regulations, ordered a consolidation of the two cases for the purposes of hearing.

On May 21, 1937, the Board, by the Regional Director, issued its complaint against the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1), (3), and (5) and Section 2 (6) and (7) of the

Act. A motion to make the complaint more definite and certain having been filed by the respondent, an amended complaint was filed on May 27, 1937. Notice of hearing upon the petition was duly served upon International Molders Union of North America, Local No. 430; Pattern Makers Association of Cleveland and Vicinity; Metal Polishers International Union, Local No. 3; International Association of Machinists, District No. 54; and Federal Labor Union No. 18907; herein jointly called the A. F. of L. Affiliates, all affiliated with the American Federation of Labor, herein called the A. F. of L.; upon the respondent; and upon the United. The complaint and notice of hearing thereon and the amended complaint and notice of hearing thereon were duly served upon the respondent and upon the United. On June 4, 1937, the respondent filed its answer, in which it admitted the interstate character of its business but denied having engaged in unfair labor practices, and prayed that the complaint be dismissed.

Pursuant to the notice a hearing on both the petition and the complaint was held in Cleveland, Ohio, on June 10, 11, 15, 16, 17 and 18, 1937, before William P. Ringer, the Trial Examiner duly designated by the Board. At the hearing the A. F. of L. Affiliates and the Cleveland Federation of Labor were permitted to intervene. The Board, the respondent, the United, the A. F. of L. Affiliates, and the Cleveland Federation of Labor were represented by counsel. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded to all the parties.

At the end of the Board's case concerning the unfair labor practices, the respondent renewed its motion to dismiss the complaint, which motion was denied by the Trial Examiner. At the same time the Trial Examiner granted a motion by counsel for the Board to amend the complaint to conform to the proof with respect to variations not involving surprise or material changes. The respondent also moved that the petition be dismissed, which motion was denied. These rulings by the Trial Examiner are hereby affirmed.

During the course of the hearing, the Trial Examiner made several other rulings on motions and on objections

to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

After the close of the hearing briefs were filed by all parties.

On November 1, 1937, both cases were transferred to and continued before the Board.

All parties were granted the right to apply for oral argument; but no applications were made.

Upon the entire record in both cases, the Board makes the following:

FINDINGS OF FACT

I. The business of the respondent

Electric Vacuum Cleaner Company, Inc., a New York corporation, manufactures, sells, and distributes electric vacuum cleaners. It has its principal office and place of business at Cleveland, Ohio, and branches in about 100 cities in the United States and Canada. It controls Premier Vacuum Cleaner Co., Ltd., of Toronto, and one-third of its own stock is held by General Electric Co. About 75 per cent of the raw materials used by the respondent are obtained outside of the State of Ohio, and about 90 per cent of its finished products are shipped out of Ohio.

II. The Organizations Involved

United Electrical and Radio Workers of America is a labor organization affiliated with the Committee for Industrial Organization, herein called the C. I. O., admitting to its membership all production and maintenance employees of the respondent, excluding office workers and clerical and supervisory employees.

Metal Polishers, Buffers, Platers and Helpers, International Union, Local No. 3, is a labor organization affiliated with the A. F. of L., admitting to its membership all metal polishers, buffers, and platers, and their helpers, employed by the respondent.

International Association of Machinists, District No. 54, is a labor organization affiliated with the A. F. of L., admitting to its membership all machinists employed by the respondent.

International Molders Union of North America, Local No. 430, is a labor organization affiliated with the A. F. of L., admitting to its membership all molders employed by the respondent.

Pattern Makers Association of Cleveland and Vicinity is a labor organization affiliated with the A. F. of L., admitting to its membership all pattern makers employed by the respondent.

Federal Labor Union No. 18907 is a labor organization affiliated with the A. F. of L., admitting to its membership all production and maintenance employees of the respondent, except supervisory employees and employees who are eligible for membership in any of the above-mentioned unions affiliated with the A. F. of L.

III. The Unfair Labor Practices.

A. Interference, Coercion and Restraint

Since 1929, the A. F. of L. Affiliates have had some members among the respondent's employees, particularly among the polishers. But by 1935 the A. F. of L. Affiliates had dropped many of their members because they were unable to pay their dues. After this decrease in membership in the A. F. of L. Affiliates, the Mechanics' Educational Society of America, herein called the M. E. S. A., formed a local among the respondent's employees, and in the spring of 1935 conducted a strike for higher wages. During this strike the M. E. S. A. endeavored to negotiate with the respondent, but negotiations came to a deadlock. Efforts of a conciliator from the United States Department of Labor to bring the two sides together were unsuccessful. There is some testimony to the effect that after the strike had gone on about 10 weeks, members of the M. E. S. A. asked aid from the A. F. of L. Affiliates, and that officials of the A. F. of L. Affiliates said they would help the strike only if the strikers joined the A. F. of L. Affiliates. In any

case, officials of the A. F. of L. Affiliates solicited members on the M. E. S. A. picket line, but obtained, at the most, about 176 members. At that time the respondent employed about 800 persons. The A. F. of L. Affiliates were able, however, to secure a conference with the respondent and an agreement to negotiate a contract. The A. F. of L. Affiliates then called a meeting of the employees of the respondent and read a contract which they said would probably be acceptable to the respondent. They asked the employees to join the A. F. of L. Affiliates and to go back to work under the terms of the contract. The majority of the employees voted to join and to go back to work; and immediately thereafter, on June 22, 1935, a written contract was signed. The A. F. of L. Affiliates did not reveal at this meeting that an oral preferential shop contract was also contemplated, providing that persons hired for the first time after the settlement of the strike must join the A. F. of L. Affiliates or be discharged. The respondent and the A. F. of L. Affiliates allege, however, that such a contract was entered into orally immediately after the meeting. This alleged oral preferential shop contract was never reduced to writing. It does not appear that its terms were ever posted or that it was ever announced at any meeting of the employees.

Although the respondent claims that foremen were instructed to inform employees concerning the alleged oral agreement, the testimony does not show that any such instructions were carried out or that employees were otherwise informed. The evidence merely shows that certain employees were aware of a rumor of an oral agreement. There is no showing that the alleged oral agreement was put into effect by the respondent.

In July 1936, the respondent and the A. F. of L. Affiliates executed another written agreement similar to that executed in June 1935. The respondent claims that at the same time, it and the A. F. of L. Affiliates made another oral agreement similar to the previous oral agreement. The evidence does not show that the employees were at that time informed concerning the oral agreement or that it was put into effect.

Decision, Order and Direction of Election

In March 1937, the A. F. of L. Affiliates began a new organizational drive among the respondent's employees, which met with little success. The A. F. of L. Affiliates then turned to and received aid from the respondent. On at least one occasion, the respondent's superintendent, George R. Paulus, accompanied an organizer while he went from machine to machine talking to employees. On several occasions foremen sent groups of employees to the respondent's office, where officials of the A. F. of L. Affiliates, in the presence of officials of the respondent, informed employees that if they did not join one of the A. F. of L. Affiliates they would lose their jobs. The respondent claims that on such occasions the employees were notified of the terms of the oral agreement. The testimony of the employees is to the effect that while at these conferences they became aware of cooperation between the respondent and the A. F. of L. Affiliates, the terms of the alleged oral agreement were not made clear to them. The respondent conceded that persons employed prior to the strike on June 23, 1935, and therefore not required to join the A. F. of L. Affiliates under the alleged agreement, were among those called in, but claims that such employees were merely asked to help organize the other employees.

On March 18, 1937, Ed Ramsey, a machinist hired prior to June 23, 1935, was discharged for refusing to join one of the A. F. of L. Affiliates. The discharge resulted in a spontaneous sit-down strike in the machine shop. The respondent states that Ramsey's discharge was a mistake and that he was immediately thereafter called to the office but refused to come. Ramsey was not called, however, until after the strike had begun, and he was not told why he was wanted in the office. Moreover, Paulus, the superintendent, testified that he told Ramsey's foreman that Ramsey had been discharged. Paulus clearly knew at the time that Ramsey had been employed prior to June 23, 1935. The evidence is contradictory as to whether Paulus thereafter went into the machine shop and told Ramsey that he was not discharged.

Several days before the sit-down, some of the employees communicated with the C. I. O. relative to organization of

the respondent's employees by it; and the C. I. O. began an organizational campaign. When the sit-down began, the C. I. O., at the behest of some of the employees, sent as an adviser Walter E. Scott, who had been an organizer for the M. E. S. A. at the time of the 1935 strike. Scott proposed to the respondent, through the chief of police, a settlement of the strike on the basis of the reinstatement of Ramsey and another employee, whose identity is not clear, and of free choice of union affiliation. The respondent agreed to these terms, provided the A. F. of L. Affiliates would consent. The A. F. of L. Affiliates then consented. Thereupon, on March 19, 1937, the strikers evacuated the plant. The next working day was Monday, March 22, 1937.

On Sunday, March 21, 1937, the respondent announced in the Cleveland newspapers that, in accordance with a letter which it had received from the A. F. of L. Affiliates, its plant would be closed on Monday, March 22.[1] The letter, dated March 20, stated that "as bargaining agent for your employees, we request you to temporarily close your plant, pending present negotiations with you relative to matters covered by our contract with you." The letter resulted from a conference between the respondent and the A. F. of L. Affiliates on March 20, 1937, at which, according to the respondent, the A. F. of L. Affiliates threatened to strike unless the plant was closed.

With the closing of the plant, the membership of the United increased. On March 26, 1937, Sam H. Griff, counsel for the United, telephoned L. C. Speith, counsel for and vice president of the respondent, and offered to discuss the reopening of the plant. Speith replied that he would notify Griff if his services were needed, but Griff did not hear from Speith again. On April 2, 1937, the United informed the respondent by letter that a majority of the respondent's employees were members of the United; that the United, instead of the A. F. of L. Affiliates, represented the majority "as to a settlement of grievances arising under the existing contract" and were ready to return to work under its terms: and that all grievances arising under the contract

[1]The letter was quoted in full.

would thereafter be handled by the committee of the United signing the letter.

On April 3 and 4, 1937, the respondent put notices in the papers directed to the respondent's employees which stated that on July 6, 1936, the respondent, at the employees' request, had entered into a contract with the A. F. of L. Affiliates recognizing them as the employees' duly chosen agents for collective bargaining; that, thereafter, until June 23, 1937, it was agreed that the respondent employ only persons affiliated with the A. F. of L. Affiliates; and that, after conferences with the employees' agents, it was at their request resuming operations April 5, 1937, but only those employees who were members of the crafts under contract with the respondent would be employed.

Thereafter, on May 20, 1937, the respondent entered into a closed-shop agreement with the A. F. of L. Affiliates, designating them as the exclusive representative of the respondent's employees. Any majority which the A. F. of L. Affiliates may have had at this time was clearly the result of the shut-down of the plant by the respondent and the refusal of the respondent to employ persons other than those in good standing with one of the A. F. of L. Affiliates.

It is clear from the foregoing that the respondent, in and after March 1937, aided in the organizational activities of the A. F. of L. Affiliates; threatened to discharge and acquiesced in threats to discharge employees who refused to join the A. F. of L. Affiliates; published statements of intention to close its plant; did on March 22, 1937, close its plant; and on May 20, 1937, entered into a closed-shop agreement with the A. F. of L. Affiliates. The respondent asserts in justification of its acts other than the execution of the closed-shop agreement on May 20 that they were undertaken in order to effectuate the terms of the oral preferential shop agreement with the A. F. of L. Affiliates previously discussed. It is clear, however, that a preferential shop agreement would in no event be a valid basis for many of the acts of the respondent. Furthermore, as set forth above, there is no showing in the record that, at the time the parties allegedly entered into the oral agreement, employees were informed concerning it or that the agree-

ment was then put into effect. Although the respondent claims later to have informed groups of employees concerning the oral agreement, the evidence indicates that at no time were the terms of any oral agreement made clear to them. Although the respondent states that the oral preferential shop agreement did not apply to persons employed prior to June 23, 1935, the newspaper notices published April 3 and 4, 1937, did not mention any such distinction. The groups of employees whom the respondent called in conference included employees hired prior to June 23, 1935, as well as persons employed thereafter. We find the respondent's reliance upon the alleged oral preferential shop agreement to be without merit.[2]

We find that the respondent by virtue of its aforesaid activities has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

B. The discriminations as to tenure of employment

The respondent delegated to the A. F. of L. Affiliates the task of putting into effect the policy set forth in the newspaper notice. On the morning of April 5, representatives of the A. F. of L. Affiliates were stationed at the gates of the respondent's plant and no one was permitted to enter without a clearance card from them. New employees were hired to fill the places of employees who were not allowed to return to work. The respondent states that the above procedure was in conformance with the alleged oral contract. It also states that the A. F. of L. Affiliates were instructed to admit all employees not subject to discharge under such oral contract. In actual practice, however, admittance to the plant was refused not only employees hired since June 23, 1935 who were not members of one of the A. F. of L. Affiliates in good standing, but also a number of persons employed prior to June 23, 1935. Moreover, the notice published in the Cleveland newspapers drew no distinction between employees hired prior to June 23, 1935,

[2]See subsection B hereof for a fuller discussion relative to our views concerning the alleged oral preferential shop agreement.

and those hired subsequently, relative to a return to work. The notice stated that only those persons who were members of one of the A. F. of L. Affiliates would be employed following the close-down.

The complaint alleges that the respondent, on or about April 5, 1937, and at all times thereafter, failed or refused to recall to employment 28 named employees who had been required to cease work when the respondent closed down the plant on March 19.

John Kern, Nicholas Kosma, William Fogarty, and Edward Koutnik. Each was employed by the respondent prior to June 23, 1935, and worked until the plant was closed down on March 22, 1937. None of the four employees belonged to any of the A. F. of L. Affiliates. Although all four employees on April 5, 1937, or shortly thereafter, sought employment, the respondent has failed and refused to recall any of them to employment.

While working for the respondent Kern received 58 cents per hour, Kosma 62 cents per hour, Koutnik 63 cents per hour, and Fogarty 58 cents per hour. Each worked 40 hours per week. At the hearing, Kern testified that since April 28, 1937, he has been employed elsewhere at approximately $25 per week but that he did not know whether the job was temporary or permanent; Kosma and Koutnik testified that they had been unemployed; and Fogarty testified that he had earned $8.90 for part time work.

Steve Dregosa, William Behrse, Howard Lowrance, Alfred Meissner, Arthur Troyan, George Onda, Arthur Kruse, Mitchell France, Mike Smith, Theodore Vitosky, Fred Frank, Harold Keehl, John Masters, and Joseph Macho.

Each was also employed by the respondent prior to the 1935 M. E. S. A. strike and until the respondent closed its plant on March 22, 1937. All at one time or another joined one of the A. F. of L. Affiliates, but all had become members of the United before April 5, 1937. Although all the said employees sought employment on or about April 5, 1937, the respondent has failed and refused to recall any of them except Keehl to employment. On April 26, 1937, Keehl was called back to work and worked until May 10,

1937. On the latter date, he was informed by his foreman that he could not work longer because his dues in one of the A. F. of L. Affiliates were not paid. He went to the office of the union, but being unable to pay his dues, did not receive a card or get his job back.

At the time of the hearing, Dragosa had a temporary job, from which he had received about $230 altogether since the closing of the plant. Onda, Lowrance, Smith and France have had no employment. On June 4, 1937, Kruse obtained a new job, from which he had earned about $30 at the time of the hearing. Before the closing of the plant he earned about $42 a week and had worked for the respondent 7 or 8 years. Behrse and Frank have also received new employment, but it may not be permanent. Altogether Behrse has earned about $173 since the lock-out, and Frank has earned 60 cents an hour working 9 hours a day. Behrse had had worked 12 years for the respondent and earned $1.05 an hour and Frank had worked 5½ years and earned 58 cents an hour, 40 hours a week. Masters has received new employment, from which he had earned about $100 at the time of the hearing. At the time of the closing of the plant he had worked 14 years for the respondent and was earning about $42 a week. Macho has had temporary employment and has received, including relief, about $205. He had worked 18 years for the respondent and also earned $42 a week, working 40 hours a week. Troyan had worked 3 years for the respondent, and received $42 a week, working 40 hours a week. About 2 weeks before the hearing he obtained new employment.

James Mitchell, Rudolph Rummell, Leo Pierret, Jewel Smith, and Joseph Washko. Each was employed by the respondent subsequent to June 23, 1935 until the plant was closed down on March 22, 1937. All joined the United before the opening of the plant on April 5. Although Mitchell, Pierret, Smith, and Washko on April 5, 1937, or shortly thereafter, sought employment, the respondent has at all times failed or refused to recall any of them except Mitchell to employment. The respondent gave Mitchell employment on May 19, 1937. Rummell went near the plant on April 5, 1937, but was afraid to go up to the gate. About April 10,

1937, he joined one of the A. F. of L. Affiliates in order to get his job back. For 2 or 3 weeks after that he was ill, but on May 10, 1937, he applied to the respondent for employment. On May 24, 1937, the respondent gave him employment. Mitchell and Rummell testified that they had earned nothing from April 5, 1937, to the date of their reemployment by the respondent.

At the time of the shut-down, Washko and Pierret each worked 40 hours per week and received, respectively, 57 and 56 cents per hour. According to their testimony at the hearing, Washko had earned on a temporary job beginning April 19, 1937, 55 cents per hour for a 40-hour week; Pierret had earned approximately $8; and Smith had earned nothing.

Edward Rericha. When Rericha, who had been employed by the respondent about 11 years, came to work on March 11, 1937, he found that his time card had been removed. An official of one of the A. F. of L. Affiliates, to which Rericha belonged, told him to go down to the union office. There he was told that he had been discharged because he had been suspended from the union for joining the C. I. O. At this time he did not belong to the C. I. O. but he had been discussing with other employees at the plant the desirability of joining. Subsequently, he was charged with failure to pay dues. Members of his local objected to his suspension from the union; and he was told to go back to work. But by that time the plant had closed, and he had not since been offered reinstatement by the respondent. While the plant was closed he joined the United. On June 11, 1937, he found a job elsewhere. From this job and from relief he has received altogether about $50 since the shut-down. At the time of his discharge he was earning about $42 a week, and working 40 hours a week.

The respondent relies upon the alleged oral agreement as justification for its failure and refusal to recall to employment all of the 24 persons discussed above. It claims that under the oral agreement persons whom the respondent hired subsequent to June 23, 1935, became subject to discharge if they did not join one of the A. F. of L. Affiliates; that although employees hired prior to June 23, 1935, were

not required to join one of the A. F. of L. Affiliates they became subject to discharge if they did join but failed to remain in good standing;[3] that persons hired prior to June 23, 1935, became subject to discharge if they joined any other union.[4]

It is clear from the evidence presented that the alleged oral agreement was at most merely a preferential agreement whereby the respondent would employ only persons affiliated with the A. F. of L. and that it did not apply to persons employed prior to June 23, 1935. Accordingly, even under the terms of the alleged preferential agreement, the respondent unlawfully discharged the 19 persons here involved who were employed prior to June 23, 1935.

Furthermore, the alleged preferential agreement afforded no justification for the discharge of Mitchell, Rummell, Pierret, Smith, and Washko, who were hired subsequent to June 23, 1935. Indeed, the agreement would furnish no such justification even if substantially a closed-shop agreement as is urged in the respondent's brief. Under Section 8 (3) of the Act, an employer may enter into a closed-shop or preferential agreement with a labor organization not established, maintained, or assisted by an unfair labor practice. The employer may not, however, discharge employees pursuant to such an agreement without any real notice being given of the terms thereof. To hold otherwise would make it impossible for an employee to distinguish between discrimination on the part of the employer in violation of the Act and compliance with an agreement valid under Section 8 (3) of the Act. Where an employee is

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[3]This contention, presented in the respondent's brief, is not supported even by the testimony of the respondent's witnesses.

[4]This contention, also presented in the respondent's brief, is likewise unsupported by the testimony of the respondent's witnesses. In support of its contention, the respondent calls attention to the following testimony of its vice president relative to a notice posted in the plant in 1935: ". . . we informed our employees that we had entered into a contract with the various affiliated unions of the American Federation of Labor, having determined that a majority of the employees were members of those various organizations. Having entered into such a contract, any person in our employ in the shop who did anything to disturb the peace and friendly relationship would be considered as working against the best interests of the company and as such was subject to discharge." Joining any union other than one of the A. F. of L. Affiliates, the respondent urges, disturbed this "peaceful and friendly relationship."

unable to distinguish between these two types of acts on the part of the employer, he risks jeopardizing his job if, thinking he is merely asserting his rights under the Act, he refuses or neglects to join a designated union. Such a situation would defeat the purposes of the Act.

We have pointed out in Section III (A) above that the employees had no real or reasonable notice concerning the terms of the alleged oral agreement. Indeed, the acts of the respondent and the notices published by the respondent were contradictory to the terms of the alleged oral agreement. Under the circumstances, the respondent cannot justify its action regarding the aforesaid employees, or any of them, on the basis of the alleged oral agreement.

On the basis of the foregoing, and in accordance with the allegations of the complaint, we find that the respondent, in refusing and failing to recall the aforesaid persons to employment and in discharging Keehl on May 10, 1937, has discriminated against the said employees with respect to hire and tenure of employment in order to discourage membership in the United and encourage membership in the A. F. of L. Affiliates, and has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

Frank Erzen, Austin Ballard, Frank Hunek, and William Krall. There is no evidence in the record with respect to the allegations of the amended complaint that the respondent on or about April 5, 1937, and at all times thereafter, failed or refused to recall to employment the said four employees. The portions of the amended complaint which relate to Ersen, Ballard, Hunek, and Krall will therefore be dismissed without prejudice.

C. The alleged refusal to bargain

On April 2, 1937, while the plant was closed down, the United wrote the respondent, stating that a majority of the respondent's employees were members of the United; that the United, rather than the A. F. of L. Affiliates, represented a majority of the employees "as to a settlement of the grievances arising under the existing contract"; that

the members of the United recognized the "existing contract" and were ready to return to work immediately under its terms; and that all grievances arising under the contract would thereafter be handled by the committee of the United signing the letter. The respondent did not reply to the letter. R. B. Wilson, a vice president of the respondent, testified that the letter was not received until April 5, 1937, the day the plant reopened.

At the hearing, a United official testified that 623 out of a total of approximately 1000 employees of the respondent had signed application cards of the United. The official submitted 573 cards for the confidential inspection of the Trial Examiner and stated that approximately 50 additional cards had disappeared from the United's office. Since the United was unwilling to disclose the names of its members to the respondent, the application cards were not submitted in evidence.

The United did, however, put in evidence what purported to be a list of its members as of March 26, 1937, with marks after the names of those who had belonged to one of the A. F. of L. Affiliates but who had stated at a meeting of the United on that date that they wanted to sever their connection with the A. F. of L. The names marked do not constitute a majority of the employees of the respondent at that time, and the evidence tending to establish the identity of the remaining names is insufficient.

We find that the evidence does not establish that the United at any time represented a majority of the respondent's employees within an appropriate unit. We will, therefore, dismiss the amended complaint insofar as it alleges that the respondent has engaged in unfair practices within the meaning of Section 8 (5) of the Act.

IV. The effect of the unfair labor practices upon commerce

We find that the activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade,

traffic, and commerce among the several States, and have led and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

We have found that the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed them in Section 7 of the Act. We shall order the respondent to cease and desist from such interference, restraint and coercion.

We have also found that the respondent has discriminated in regard to the hire and tenure of employment of John Kern, Nicholas Kozma, William Fogarty, Edward Koutnik, Steve Dragosa, William Behrse, Howard Lowrance, Alfred Meissner, Arthur Troyan, George Onda, Arthur Kruse, Mitchell France, Mike Smith, Theodore Vitrosky, Fred Frank, John Masters, Joseph Macho, James Mitchell, Rudolph Rummell, Leo Pierret, Jewel Smith, Joseph Washko and Edward Rericha, by failing and refusing to recall said persons to employment on April 5, 1937, or at any time thereafter, except that Mitchell was recalled to employment on May 19, 1937, and Rummell on May 24, 1937. We shall, therefore, affirmatively require the respondent to offer reinstatement to all of said employees except the two who have been reinstated; to pay to the said employes to be offered reinstatement, a sum of money equal to that which each would normally have earned as wages, from April 5, 1937, to the date on which they are offered reinstatement less the amount, if any, which each has earned during that period; and to pay to Mitchell and Rummell a sum of money equal to that which each would normally have earned as wages from April 5, 1937, to the date on which they were reinstated, less the amount, if any, which each earned from April 5, 1937, to the date on which they were reinstated.

We have further found that the respondent has discriminated in regard to the hire and tenure of employment of Harold Keehl by failing and refusing to recall him to employment on April 5, 1937, until April 26, 1937, and by dis-

criminatorily discharging him on May 10, 1937. We shall, therefore, affirmatively require the respondent to offer reinstatement to Keehl and to pay to him a sum of money equal to that which he would normally have earned as wages from April 5, 1937, to April 26, 1937, and from May 10, 1937, to the date on which he is offered reinstatement, less the amount, if any, which he has earned during the said periods.

VI. The question concerning representation

We have noted in Section III above that the United claims to represent a majority of the respondent's employees and has unsuccessfully sought to bargain with the respondent. The A. F. of L. Affiliates also claim to represent a majority of the respondent's employees.

The respondent however, contends that no question concerning representation exists, because of a closed-shop contract between it and the A. F. of L. Affiliates, dated May 20, 1937. This contract was entered into about a month after the United's petition to the Board had been filed, and after negotiations between the respondent and the A. F. of L. Affiliates, dating back to the shut-down of the plant by the respondent on March 22, 1937. As proof of authority to negotiate the contract, the A. F. of L. Affiliates showed the respondent membership cards of a majority of the production and maintenance employees. It was testified that copies of the contract were signed by 964 out of a total of about 1032 employees, and 964 signed copies were put in evidence.

This majority, however, was a direct result of the respondent's unfair labor practices in closing its plant on March 22, 1937, and reemploying only those in good standing with one of the A. F. of L. Affiliates. Because of those unfair labor practices the respondent's employees were not free to designate the bargaining agents of their choice, but were compelled to designate the A. F. of L. Affiliates in order to remain their jobs. The contract is, therefore, without force or effect.

We find that a question has arisen concerning the representation of employees of the respondent.

VII. The effect of the question concerning representation on commerce

We find that the question concerning representation which has arisen, occurring in connection with the operations of the respondent described in Section I above, has a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

VIII. The appropriate unit

The United contends that all of the production and maintenance employees at the respondent's plant, excluding supervisory and clerical employees, constitute a unit appropriate for purposes of collective bargaining. The respondent's plant is organized upon a mass production basis, and the various departments in it are so closely related functionally that, according to the testimony of the respondent's vice president, the plant cannot run unless each department is operated. The A. F. of L. Affiliates and the Cleveland Federation of Labor do not suggest that a plant-wide unit is inappropriate, and the contracts heretofore entered into between the respondent and the A. F. of L. Affiliates have been on a plant-wide basis.

We find that the production and maintenance employees at the respondent's plant, excluding clerical and supervisory employees, constitute a unit appropriate for purposes of collective bargaining and that said unit will insure to the employees at the respondent's plant the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

IX. The determination of representatives

We have pointed out above that, although the United claims to represent a majority of the employees of the respondent within an appropriate unit, it has failed to establish this claim. We have also shown that the A. F. of L. Affiliates claim to represent a majority of such employees, but that they have been aided and assisted by the respon-

dent in obtaining members. We find, therefore, that the question which has arisen concerning representation can best be resolved by an election by secret ballot.

We shall not, however, at this time fix the date for the holding of the election since we are of the opinion that the election should not be held until sufficient time has elapsed to permit a free choice of representatives unaffected by the respondent's unfair practices. We shall at the time we specify the date on which the election is to be held also specify the date on the basis of which eligibility to vote in the election shall be determined.

Upon the basis of the foregoing findings of fact and the entire record in the proceeding, the Board makes the following:

CONCLUSIONS OF LAW

1. International Molders Union of North America, Local No. 430; Pattern Makers Association of Cleveland and Vicinity; Metal Polishers International Union, Local No. 3; International Association of Machinists, District No. 54; Federal Labor Union No. 18907; and United Electrical & Radio Workers of America are labor organizations within the meaning of Section 2 (5) of the Act;

2. The respondent, by discriminating in regard to the hire and tenure of employment of John Kern, Nicholas Kozma, William Fogarty, Edward Koutnik, Steve Bragosa, William Behrse, Howard Lowrance, Alfred Meissner, Arthur Smith, Theodore Vitosky, Fred Frank, John Masters, Joseph Macho, James Mitchell, Rudolph Rummell, Leo Pierret, Jewel Smith, Joseph Washko, Edward Rericha, and Harold Keehl, thereby encouraging membership in the first five labor organizations mentioned in paragraph 1 above, and discouraging membership in United Electrical & Radio Workers of America, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act;

3. The respondent, by interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, has engaged and is en-

gaging in unfair labor practices within the meaning of Section 8 (1) of the Act;

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act;

5. The respondent has not engaged in unfair labor practices within the meaning of Section 8 (5) of the Act;

6. A question affecting commerce has arisen concerning the representation of employees of Electric Vacuum Cleaner Company, Inc., Cleveland, Ohio, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act;

7. The production and maintenance employees of the said company, excluding clerical and supervisory employees, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

ORDER

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Electric Vacuum Cleaner Company, Inc., and its officers, successors, and assigns, shall:

1. Cease and desist:

(a) From discouraging membership in United Electrical and Radio Workers of America or any other labor organization by discharging, refusing to reinstate, or otherwise discriminating against its employees in regard to hire or tenure of employment, or any term or condition of employment;

(b) From encouraging membership in International Molders Union of North America, Local No. 430; Pattern Makers Association of Cleveland and Vicinity; Metal Polishers International Union, Local No. 3; International Association of Machinists, District No. 54; Federal Labor Union No. 18907; or any other labor organization by discharging, refusing to reinstate, or otherwise discriminate against its employees in regard to hire or tenure of employment, or any term or condition of employment;

(c) From in any other manner interfering with, restraining, or coercing its employees in the exercise of the rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act;

(d) From giving effect to the closed-shop agreement of May 20, 1937.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Offer immediate and full reinstatement to their former positions, without prejudice to their seniority and other rights and privileges, to John Kern, Nicholas Kosma, William Fogarty, Edward Koutnik, Steve Dragosa, William Behrse, Howard Lowrance, Alfred Meissner, Arthur Troyan, George Onda, Arthur Kruse, Mitchell France, Mike Smith, Theodore Vitosky, Fred Frank, John Masters, Joseph Macho, Leo Pierret, Jewel Smith, Joseph Washko and Edward Rericha;

(b) Make whole the said John Kern, Nicholas Kosma, William Fogarty, Edward Koutnik, Steve Dragosa, William Behrse, Howard Lowrance, Alfred Meissner, Arthur Troyan, George Onda, Arthur Kruse, Mitchell France, Mike Smith, Theodore Vitosky, Fred Frank, John Masters, Joseph Macho, Leo Pierret, Jewel Smith, Joseph Washko, and Edward Rericha, for any loss of pay they have suffered by reason of the respondent's discrimination in regard to their hire and tenure of employment by payment to each of them of a sum of money equal to that which each would normally have earned as wages from April 5, 1937, to the date of such offer or reinstatement, less the amount, if any, which each has earned during that period;

(c) Offer to Harold Keehl immediate and full reinstatement to his former position, without prejudice to his seniority or other rights and privileges, and make him whole for any loss of pay he has suffered by reason of the respondent's discrimination in regard to his hire and tenure of employment, by payment to him of a sum of money equal

to that which he normally would have earned as wages during the period from April 5, 1937, to April 26, 1937, and during the period from May 10, 1937, to the offer of reinstatement pursuant to this order, less the amount, if any, which he has earned during the said periods;

(d) Make whole James Mitchell and Rudolph Rummell for any loss of pay they have suffered by reason of the respondent's discrimination in regard to their hire and tenure of employment, by payment to each of them of a sum of money equal to that which would normally have earned as wages during the period from April 5, 1937, to May 19, 1937, in the case of Mitchell, and during the period from April 5, 1937, to May 24, 1937 in the case of Rummell, less the amount, if any, which each earned during the respective periods;

(e) Immediately post notices in conspicuous places throughout its plant, and maintain such notices for a period of thirty (30) consecutive days from the date of such posting, stating: (1) that the respondent will cease and desist in the manner aforesaid; (2) that the respondent's employees are free to join or assist United Electrical & Radio Workers of America or any other labor organization for the purposes of collective bargaining with the respondent or other mutual aid or protection; (3) that in order to secure or continue employment in the plant, a person need not become or remain a member of International Molders Union of North America, Local No. 430; or Pattern Makers Association of Cleveland and Vicinity; or Metal Polishers International Union, Local No. 3; or International Association of machinists, District No. 54; or Federal Labor Union No. 18907; or any other labor organization; and (4) that the closed-shop agreement dated May 20, 1937, between the respondent and the five unions last named, and designating those unions as the exclusive representative of the respondent's employees, is void and of no effect;

(f) Notify the Regional Director for the Eighth Region, Cleveland, Ohio, in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply therewith.

It is further ordered that the complaint, in so far as

it alleges that the respondent discriminated in regard to the hire and tenure of employment of Frank Erzon, Austin Ballard, Frenk Hunek, and William Krall, within the meaning of Section 8 (3) of the Act, be, and it hereby is, dismissed without prejudice.

And it is hereby further ordered that the complaint, in so far as it alleges that the respondent has engaged in unfair labor practices within the meaning of Section 8 (5) of the Act, be, and it hereby is, dismissed.

DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Board Rules and Regulations—Series 1, as amended, it is hereby

Directed that, as part of the investigation ordered by the Board to ascertain representatives for the purposes of collective bargaining with Electric Vacuum Cleaner Company, Inc., Cleveland, Ohio, an election by secret ballot shall be conducted at such date as the Board may in the future direct, under the direction and supervision of the Regional Director for the Eighth Region, acting in this matter as agent for the National Labor Relations Board and subject to Article III, Section 9, of said Rules and Regulations, among the production and maintenance employees of the said company who were employed by it during a pay-roll period which we shall in the future specify, excluding clerical and supervisory employees, to determine whether they desire to be represented by the American Federation of Labor or by United Electrical & Radio Workers of America, affiliated with the Committee for Industrial Organization, for the purposes of collective bargaining, or by neither.

Signed at Washington, D. C., this 7th day of July, 1938.

J. Warren Madden,
Chairman,
Edwin S. Smith,
Member,
Donald Wakefield Smith,
Member,
National Labor Relations Board.

(Seal)

EXCEPTIONS OF ELECTRIC VACUUM CLEANER COMPANY, INC., RESPONDENT, TO DECISION AND ORDER OF NATIONAL LABOR RELATIONS BOARD

(Filed July 16, 1938)

Respondent excepts to the decision and order of the Board, and each and every part and paragraph thereof, upon the ground that no intermediate report of the Trial Examiner was filed in these cases, so that Respondent had no opportunity to object or except thereto before the making of said decision and order, and that Respondent was not in any manner advised before the making of said decision and order of the proposed nature or contents thereof, and therefore had no reasonable opportunity to know the same or to object or except thereto.

Without waiving the foregoing exception, and without prejudice thereto, Respondent files the following exceptions to said findings of fact, conclusions of law, decision and order.

1. Respondent excepts to the affirmance by the Board of the Trial Examiner's rulings on motions and on objections to the admission of evidence, for the reason that each and every one of such rulings of the Trial Examiner were erroneous, to the prejudice of Respondent.

2. Respondent excepts to the affirmance by the Board of the Trial Examiner's overruling of Respondent's motion to dismiss the complaint at the end of the Board's case, for the reason that there was no evidence of any unfair labor practice by Respondent affecting commerce, as defined in the National Labor Relations Act.

3. Respondent excepts to the affirmance by the Board of the Trial Examiner's overruling of the motion of Respondent, made at the close of the Board's case, that the petition be dismissed, for the reason that the petition states no case within the jurisdiction of the Board and no violation of the Board and no violation of the National Labor Realtions Act.

4. Respondent excepts to that portion of Paragfaph II of the Board's findings of fact which finds that United Electrical & Radio Workers of America is a labor organiza-

tion, admitting to its membership all production and maintenance employes of Respondent (with certain exceptions mentioned in said findings), for the reason that at the time of the occurrence of the matters set forth in the petition there was no local organization of said United Electrical & Radio Workers of America exercising or claiming to exercise jurisdiction over employes of Respondent.

5. Respondent excepts to Section A, "Interference, coercion and restraint," of Paragraph III, "The unfair labor practices," of the Board's findings of fact, and to each and every part of said Section A, for the reason that there is no evidence in the record sustaining the Board's said finding.

6. Respondent excepts to Section B, "The discriminations as to tenure of employment," of Paragraph III, "The unfair labor practices," of the Board's findings of fact, and to each and every part thereof, in so far as they relate to each and every one of the former employes of Respondent named in said Section B, except Frank Erzen, Austin Ballard, Frank Hunek and William Krall, for the reason that there is no evidence in the record to sustain the Board's said findings as to the said former employes (other than said Frank Erzen, Austin Ballard, Frank Hunek and William Krall), or any of them.

7. Respondent excepts to the finding in Paragraph IV of said findings that any activities of Respondent have led or tend to lead to labor disputes, burdening and obstructing commerce and the free flow of commerce as defined in the National Labor Relations Act, for the reason that there is no evidence in the record sustaining such finding.

8. Respondent excepts to that portion of Paragraph V of said findings of fact which finds that Respondent has interfered with, restrained and coerced its employes in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act, for the reason that there is no evidence in the record sustaining such finding.

9. Respondent excepts to that portion of Paragraph V of said findings of fact which finds that the Respondent has discriminated in regard to the hire and tenure of employment of certain persons named in said Paragraph V,

for the reason that there is no evidence in the record to sustain such finding as to said persons or any of them.

10. Respondent excepts to the findings in Paragraph VI of said findings of fact that the majority of Respondent's employes, shown by membership cards issued by A. F. of L. Affiliates, was a result of unfair labor practices on the part of Respondent, and that Respondent's employes were, because of such unfair labor practices, not free to designate bargaining agents of their own choice, and that the contract between Respondent and the A. F. of L. Affiliates, referred to in said Paragraph VI is without force or effect, for the reason that there is no evidence in the record to sustain such findings, and that said finding that said contract is without force or effect is not only not sustained by any evidence but is contrary to law.

11. Respondent excepts to that portion of Paragraph VII of said findings which finds that the question concerning representation referred to therein tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce, for the reason that there is no evidence in the record sustaining such finding.

12. Respondent excepts to Paragraph 1 of the Board's conclusions of law, for the reason that the conclusion contained in said paragraph that United Electrical & Radio Workers of America is a labor organization within the meaning of Section 2 (5) of the National Labor Relations Act is contrary to law and the evidence.

13. Respondent excepts to Paragraph 2 of said conclusions of law, and each and every part thereof; for the reason that the same assumes a state of facts with regard to each and every one of the persons therein named which is not supported by any evidence in the record, and said conclusion of law is therefore contrary to law and to the evidence.

14. Respondent excepts to Paragraph 3 of said conclusions of law for the reason that said Paragraph 3 assumes that Respondent has interfered with, restrained and coerced its employes in the exercise of rights guaranteed in Section 7 of the National Labor Relations Act when there is no evidence in the record to sustain such assump-

tion, and that said Paragraph 3 is therefore contrary to law and to the evidence.

15. Respondent excepts to Paragraph 4 of said conclusions of law for the reason that the same assumes that Respondent has engaged in unfair labor practices when there is no evidence in the record sustaining such assumption, and that said Paragraph 4 is therefore contrary to law and to the evidence.

16. Respondent excepts to Section (a) of Paragraph 1 of the Board's order for the reason that there is no evidence in the record that Respondent has engaged in any of the conduct from which, by said Section (a), it is ordered to cease and desist.

17. Respondent excepts to Section (b) of Paragraph 1 of the Board's order for the reason that there is no evidence in the record that Respondent has engaged in any of the conduct from which, by said Section (b), it is ordered to cease and desist.

18. Respondent excepts to Section (c) of Paragraph 1 of the Board's order for the reason that there is no evidence in the record that Respondent has engaged in any of the conduct from which, by said Section (c), it is ordered to cease and desist.

19. Respondent excepts to Section (d) of Paragraph 1 of the Board's order for the reason that the same is contrary to law.

20. Respondent excepts to Sections (a), (b), (c) and (d) of Paragraph 2 of the Board's order for the reason that the same, as it applies to each and every one of the persons therein named, is contrary to law.

21. Respondent excepts to Section (e) of Paragraph 2 of the Board's order for the reason that the same is contrary to law and commands the performance by the Respondent of acts, the requirement of which by the Board is contrary to law.

22. Respondent excepts to Section (f) of Paragraph 2 of the Board's order for the reason that it requires Respondent to notify the Regional Director for the Eighth Region what steps Respondent has taken to comply with orders which are contrary to law.

Exceptions of Electric Vacuum Cleaner Company, Etc.

23. The Board, in failing to decide this case for thirteen months after trial, has by such an unreasonable delay prejudiced Respondent's rights, in that in case of an affirmance of the order directing reinstatement of certain employes, Respondent will then be required to pay in back wages a sum greatly in excess of that which would have been payable had the decision been promptly rendered, and by reason thereof Respondent excepts thereto.

Electric Vacuum Cleaner Company, Inc.,
By Cannon, Spieth, Taggart, Spring & Annat,
1568 Union Commerce Bldg.,
Cleveland, Ohio,
Its Attorneys.

OBJECTIONS TO THE DECISION AND ORDER MADE AND ENTERED IN THE ABOVE MATTER BY THE NATIONAL LABOR RELATIONS BOARD ON JULY 7, 1938, AND MOTION TO AMEND SAID DECISION AND ORDER

(Filed August 4, 1938)

The labor unions hereinafter named by Joseph A. Padway, their counsel, object to the decision and order of the National Labor Relations Board in the above entitled matter, which decision and order were made and entered on the 7th day of July 1938:

Metal Polishers, Buffers, Platers and Helpers International Union Local No. 3, affiliated with the American Federation of Labor.

International Association of Machinists, District No. 54 affiliated with the American Federation of Labor.

International Molders Union of North America No. 430, affiliated with the American Federation of Labor.

Pattern Makers Association of Cleveland and vicinity affiliated with the American Federation of Labor.

Federal Labor Union No. 18907, affiliated with the American Federation of Labor.

The above named labor organizations object to all the material findings on which the contract between the respondent and the American Federation of Labor Unions above named is set aside and declared invalid, for the reason that the findings are not supported by credible evidence in the case.

The labor unions above named object to the conclusions of law insofar as the same relate to Paragraphs 2, 3, 4, 6 and 7, for the reason that the same are contrary to law in that they are not founded upon credible evidence in the case.

The labor unions above named object to the order of the Board insofar as the same relates to subparagraphs (a), (b), (c) and (d) of paragraph 1, and subparagraphs (a), (b), (c), (d), (e) and (f) of paragraph 2, for the reason that the same are contrary to law in that there is no credible evidence to sustain said order.

The labor unions above named object to that portion of the order directing an election under Section 9 (c) of the National Labor Relations Act for the reason that there is no credible evidence concerning such order of election.

The labor unions above named now move on the basis of the foregoing objections that the findings of fact and the conclusions of law and the order of the National Labor Relations Board in the respects hereinbefore referred to and objected to be vacated and set aside, and the relief granted the United Electrical and Radio Workers of America to be denied and its charges and the complaint of the Board be dismissed.

In the event the foregoing objections are overruled, then the labor unions aforenamed move the Board for the following amendment of the decision and order referred to:

That Paragraph VIII of the findings dealing with the appropriate unit be changed by deleting therefrom the following:

"* * * The A. F. of L. Affiliates and the Cleveland Federation of Labor do not suggest that a plant-wide unit is inappropriate, and the contracts heretofore entered into between the respondent and the A. F. of L. Affiliates have been on a plant-wide basis."

and to substitute therefor the following:

"That the American Federation of Labor affiliates and the Cleveland Federation of Labor are separate and autonomous units and that each labor union aforenamed is an appropriate unit for the purpose of collective bargaining and that the members of said labor unions are entitled to vote for the person or organization they desire to represent them as the exclusive bargaining agent for its separate craft and group."

In the event the foregoing is denied, that each of the unions above named moves that they be granted an opportunity to present further evidence in support of the contention of each that the members affiliated with each union are a separate and distinct group and each constitutes an appropriate unit for the purpose of collective bargaining.

The unions aforenamed move that the order be amended so as to strike therefrom paragraph (d) which reads:

"(d) From giving effect to the closed-shop agreement of May 20, 1937."

and in its place and stead substitute the following:

"(d) That the closed shop agreement entered into May the 20th, 1937, is valid."

Each of the unions above named moves that in the event the order for direction of election is not vacated and set aside that such order directing an election be amended so as to delete therefrom the second paragraph and substitute therefor an order directing an election to be held forthwith and within a definite fixed period not later than twenty (20) days from the date hereof, and that the election be held and conducted on the basis of separate units for each of the group workers eligible to membership in each of the unions

aforenamed affiliated with the American Federation of Labor so that each such separate craft or group may by majority vote select its representative for the purpose of collective bargaining on their own behalf.

Dated, August 1st, 1938.

Metal Polishers, Buffers, Platers and Helpers International Union Local No. 3, affiliated with the American Federation of Labor,

International Association of Machinists, District No. 54, affiliated with the American Federation of Labor,

International Molders Union of North America No. 430, affiliated with the American Federation of Labor,

Pattern Makers Association of Cleveland and vicinity affiliated with the American Federation of Labor,

Federal Labor Union No. 18907, affiliated with the American Federation of Labor,

By Jos. A. Padway,

Counsel for Each of the Aforenamed Unions.

ORDER OVERRULING EXCEPTIONS AND OBJECTIONS AND DENYING MOTIONS TO SET ASIDE OR AMEND DECISION, ORDER AND DIRECTION OF ELECTION AND TO REOPEN RECORD

At a regular meeting of the National Labor Relations Board, held at its office in the City of Washington, D. C., on the 23rd day of August 1938.

Present:

J. Warren Madden, Chairman.
Donald Wakefield Smith.

The Board having issued a Decision, Order and Direction of Election in the above-entitled proceeding, directing that an election to determine representatives for the purpose of collective bargaining shall be conducted at such date as the Board may in the future direct, and Metal Polishers, Buffers, Platers and Helpers, International Union Local No. 3; International Association of Machinists, District No. 54; International Molders Union of North America No. 430; Pattern Makers Association of Cleveland and Vicinity; and Federal Labor Union No. 18907 having filed exceptions and objections to said Decision, Order and Direction of Election, and having moved the Board to vacate and set aside said Decision, Order and Direction of Election, or, in the event said motion is denied, to amend said Decision, Order and Direction of Election, and to reopen the record for further proceedings with regard to the question of the unit appropriate for the purposes of collective bargaining, and the respondent having filed exceptions to said Decision and Order, and the Board having duly considered the matter,

It Is Hereby Ordered that all said exceptions and objections be, and they hereby are, overruled, and that all said motions be, and they hereby are, denied without prejudice to the renewal, at such time hereafter as the Board may direct an election to be conducted, of the motion to reopen the record for further proceedings with regard to the ques-

tion of the unit appropriate for the purposes of collective bargaining.

By direction of the Board:

(Seal) /s/ Beatrice M. Stern,
Assistant Secretary.

NOTICE TO VACATE

To:

United Electrical & Radio Workers of America,
1002 East 149 Street,
Cleveland, Ohio.

Electric Vacuum Cleaner Co., Inc.,
1734 Ivanhoe Road,
Cleveland, Ohio.

International Molders Union of North America,
Local No. 430,
1000 Walnut Street,
Cleveland, Ohio.

Pattern Makers Association of Cleveland and Vicinity,
1000 Walnut Street,
Cleveland, Ohio.

Metal Polishers International Union, Local No. 3,
1000 Walnut Street,
Cleveland, Ohio.

International Association of Machinists,
District No. 54,
1000 Walnut Street,
Cleveland, Ohio.

Federal Labor Union No. 18907,
1000 Walnut Street,
Cleveland, Ohio.

Notice to Vacate

Cleveland Federation of Labor,
1248 Walnut Avenue,
Cleveland, Ohio.

Please Take Notice that on Thursday, April 6, 1939, or as soon thereafter as may be convenient, the National Labor Relations Board, unless sufficient cause to the contrary shall have appeared, will vacate and set aside its Findings of Fact, Conclusions of Law, Order, and Direction of Election in the above-entitled cases, issued July 7, 1938, for the purpose of further proceedings before the Board.

You Are Hereby Advised that you may file in writing with the National Labor Relations Board in Washington, D. C., on or before Monday, April 3, 1939, objections, and arguments in support thereof, to the vacating and setting aside of the said Findings of Fact, Conclusions of Law, Order, and Direction of Election. Application for permission to argue orally on the said objections may be filed together with the said objections and, if granted, will be heard at a time and place to be fixed by the Board.

Dated, Washington, D. C., March 16, 1939.

By direction of the Board:

(Seal)

/s/ Nathan Witt,
Secretary.

ORDER VACATING AND SETTING ASIDE FINDINGS OF FACT CONCLUSIONS OF LAW, ORDER, AND DIRECTION OF ELECTION

The Board having issued its Findings of Fact, Conclusions of Law, Order, and Direction of Election in the above-entitled cases on July 7, 1938; and the transcript of the record in the said cases not having been filed in any court; and the Board having given due notice that on Thursday, April 6, 1939, or as soon thereafter as may be convenient, unless sufficient cause to the contrary should have appeared, it would vacate and set aside its Findings of Fact, Conclusions of Law, Order, and Direction of Election for the purpose of further proceedings before the Board; and no sufficient cause to the contrary appearing; and the Board desiring to take further proceedings in this matter,

It Is Hereby Ordered that the Findings of Fact, Conclusions of Law, Order and Direction of Election issued July 7, 1938, in the cases, be, and they hereby are, vacated and set aside; and that the Board shall take such further proceedings herein as it may be advised are necessary or desirable.

Dated, Washington, D. C., April 11, 1939.

By direction of the Board:

/s/ Nathan Witt,
Secretary.

ORDER DIRECTING ISSUANCE OF PROPOSED FINDINGS OF FACT, PROPOSED CONCLUSIONS OF LAW, PROPOSED ORDER, PROPOSED DIRECTION OF ELECTION AND GRANTING RIGHT TO FILE EXCEPTIONS, REQUEST ORAL ARGUMENT AND PERMISSION TO FILE BRIEF

(Docketed June 21, 1939)

The Board having issued a Decision, Order, and Direction of Election in the above-entitled cases on July 7, 1938, and having on April 11, 1939 vacated the said Decision, Order and Direction of Election, and the Board having duly considered the matter,

It Is Hereby Ordered, pursuant to Article II, Section 38(d), and Article III, Sections 8 and 10(c) of National Labor Relations Board Rules and Regulations—Series 1, as amended, that Proposed Findings of Fact, Proposed Conclusions of Law, Proposed Order, and Proposed Direction of Election shall be issued; and

It Is Further Ordered, pursuant to Article II, Section 38(d), and Article III, Sections 8 and 10(c) of the said Rules and Regulations, that the parties herein shall have the right, within twenty (20) days from the receipt of the said Proposed Findings of Fact, Proposed Conclusions of Law, Proposed Order, and Proposed Direction of Election, to file Exceptions, to request oral argument before the Board, and to request permission to file a brief with the Board.

Dated, Washington D. C., June 21, 1939.

By direction of the Board:

(Seal)

Nathan Witt,
Secretary.

PROPOSED FINDINGS OF FACT, PROPOSED CONCLUSIONS OF LAW, PROPOSED ORDER AND PROPOSED DIRECTION OF ELECTION

Mr. Harry L. Lodish, for the Board.
Mr. L. C. Speith and Mr. H. A. Spring, of Cleveland, Ohio, for the respondent.
Mr. Sam H. Griff, of Cleveland, Ohio, for the United.
Mr. Joseph H. Padway, of Washington, D. C., Mr. Edwin F. Woodle and Mr. Bernard Wachtel, of Cleveland, Ohio, for the A. F. of L. Affiliates.
Mr. John H. Orgill, of Cleveland, Ohio, for the Cleveland Federation of Labor.
Miss Margaret B. Bennett and Mr. Isadore Polier of counsel for the Board.

Statement of the Case

On April 22, 1937, United Electrical and Radio Workers of America, herein called the United, affiliated with the Committee for Industrial Organization (now the Congress of Industrial Organizations), herein called the C. I. O., filed with the Regional Director for the Eighth Region (Cleveland, Ohio) a petition alleging that a question affecting commerce had arisen concerning the representation of production and maintenance employees of Electric Vacuum Cleaner Company, Inc., Cleveland, Ohio, herein called the respondent excluding clerical and supervisory employees, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On the same day, the United filed with the Regional Director charges alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of the Act.

On May 6, 1937, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered an investigation and authorized the Regional Director to conduct it and to provide an appropriate hearing

upon due notice. On May 11, 1937, the Board, acting pursuant to Article III, Section 10 (c) (2) of said Rules and Regulations, ordered a consolidation of the two cases for the purposes of hearing.

On May 21, 1937, the Board, by the Regional Director, issued its complaint against the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1), (3), and (5) and Section 2 (6) and (7) of the Act. A motion to make the complaint more definite and certain having been filed by the respondent, an amended complaint was filed on May 27, 1937. Notice of hearing upon the petition was duly served upon International Molders Union of North America, Local No. 430; Pattern Makers Association of Cleveland and Vicinity; Metal Polishers International Union, Local No. 3; International Association of Machinists, District No. 54; and Federal Labor Union No. 18907; herein jointly called the A. F. of L. Affiliates, all affiliated with the American Federation of Labor, herein called the A. F. of L. upon the respondent; and upon the United. The complaint and notice of hearing thereon and the amended complaint and notice of hearing thereon were duly served upon the respondent and upon the United.

The complaint, as amended, charged in substance (1) that the respondent refused to bargain collectively with the United as the exclusive representative of the employees in an appropriate bargaining unit composed of all employees in the production and maintenance departments, exclusive of clerical and supervisory employees; (2) that the respondent in March 1937, and at various times thereafter interfered with, restrained and coerced its employees in their right to self-organization, and particularly interfered with, restrained, and coerced its employees by threatening and acquiescing in threats to discharge employees who refused to join labor organizations chosen by respondents, by uttering and publishing and permitting to be uttered and published statements, advertisements and declarations of intentions to close its plant, by closing its plant on March 19, 1937, by refusing on April 5, 1937, to reinstate a large number of employees, by failing or refusing

from and after April 5, 1937, to recall to employment 28 named employees because they had engaged in concerted activities for the purposes of collective bargaining and other mutual aid and protection; and (3) that respondent had discriminated in regard to the hire and tenure of the aforesaid 28 employees for the reasons aforesaid and to discourage membership in the United.

On June 4, 1937, the respondent filed its answer, which admitted the interstate character of its business and the appropriateness of the unit for collective bargaining set forth in the complaint, but denied the alleged unfair labor practices and stated certain affirmative matter. By way of affirmative defense respondent alleged (1) that on June 22, 1935, respondent entered into a one-year contract with the A. F. of L. Affiliates, which then represented a majority of its employees, recognizing said A. F. of L. Affiliates as exclusive representative for collective bargaining, and as part of said contract notified its employees that attempted interference with said contract would result in discharge, that employees not then members of the A. F. of L. Affiliates would not be required to become a member, but that in the future only members of the A. F. of L. Affiliates would be employed; (2) that on July 6, 1936, a contract, substantially identical with the contract of June 22, 1935, was entered into between respondent and the A. F. of L. Affiliates, which then also represented a majority of its employees, the contract to be effective as of June 24, 1936, and to run for a year; (3) that on March 20, 1937, the A. F. of L. Affiliates requested respondent to close its plant temporarily and that it accordingly did so; (4) that the plant remained closed until April 5, 1937, when it was reopened pursuant to a notice published by respondent to the effect that about July 6, 1936, it had entered into a closed-shop contract with the A. F. of L. Affiliates which ran until June 23, 1937, and that, therefore, only those employees who were members of the A. F. of L. Affiliates would be employed; (5) that after negotiations between respondent and the A. F. of L. Affiliates during period April 5, 1937, to May 20, 1937, and after a majority of respondent's employees had designated the A. F. of L. Affiliates as repre-

sentative for collective bargaining and approved such contract, respondent and the A. F. of L. Affiliates on May 20, 1937, entered into a contract which included a closed-shop agreement.

Pursuant to notice a hearing on both the petition and the complaint was held in Cleveland, Ohio, on June 10, 11, 15, 16, 17 and 18, 1937, before William P. Ringer, the Trial Examiner duly designated by the Board. At the hearing the A. F. of L. Affiliates and the Cleveland Federation of Labor were permitted to intervene, both with respect to the hearing on the petition and with respect to the hearing on the complaint. The Board, the respondent, the United, the A. F. of L. Affiliates, and the Cleveland Federation of Labor were represented by counsel. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded to all parties.

At the end of the case concerning the unfair labor practices, the respondent moved to dismiss the complaint, which motion was denied by the Trial Examiner. At the same time the Trial Examiner granted a motion by counsel for the Board to amend the complaint to conform to the proof with respect to variations not involving surprise or material changes. At the conclusion of the hearing, the A. F. of L. Affiliates moved that the petition be dismissed, which motion was denied. These rulings by the Trial Examiner are hereby affirmed.

During the course of the hearing, the Trial Examiner made several other rulings on motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

After the close of the hearing briefs were filed by respective counsel for the Board, the respondent, the A. F. of L. Affiliates and the Cleveland Federation of Labor. On November 1, 1937, both cases were transferred to and continued before the Board. On July 7, 1938, the Board duly issued its findings of fact, conclusions of law, order,

and direction of election.[1] On July 16, 1938, the respondent filed with the Board exceptions to said findings of fact, conclusions of law, and order.[2] On August 4, 1938, the A. F. of L. Affiliates filed objections to said findings of fact, conclusions of law, order, and direction of election, and moved that the same be amended.[3] The Board duly considered said exceptions, objections and motions, and on August 23, 1938, overruled said objections and denied said motions.[4]

On March 16, 1939, the Board, acting on its own motion, pursuant to Sections 9 (c) and 10 (d) of the Act, and Article III, Sections 8 and 10 (c) (2) and Article II, Sections 37 and 38 of said Rules and Regulations, duly notified the A. F. of L. Affiliates, the Cleveland Federation of Labor, the respondent and the United, that on April 6, 1938, or as soon thereafter as convenient, the Board, unless sufficient cause to the contrary should have appeared, would vacate and set aside its findings of fact, conclusions of law, order, and direction of election issued July 7, 1938, for the purpose of further proceedings before the Board. All parties were granted, but none exercised, the right to file objections and arguments, and to apply for oral argument. On April 11, 1939, the Board duly ordered the findings of fact, conclusions of law, order, and direction of election vacated and set aside.

Upon the entire record in both cases, the Board makes the following:

Findings of Fact

I. The Business of the Respondent

Electric Vacuum Cleaner Company, Inc., a New York corporation, manufactures, sells, and distributes electric vacuum cleaners. It has its principal office and place of business at Cleveland, Ohio, and branches in about 100 cities in the United States and Canada, and its trade-mark is

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[1] 8 N. L. R. B. 112.

[2] See page 128, infra.

[3] See page 128, infra.

[4] See footnote 31, infra.

egistered with the United States Patent Office for use in nterstate commerce. Respondent controls Premier Vacuum Cleaner Co., Ltd., of Toronto, and in turn one-hird of its own stock is held by General Electric Company. About 75 per cent of the raw materials used by the re-pondent are obtained outside of the State of Ohio, and bout 90 per cent of its finished products are shipped out f Ohio. In the year 1936 it produced over 200,000 units. n 1935 and 1936 respondent employed approximately 800 ersons, excluding office workers and clerical and super-isory employees. According to the pay rolls, the number o employed had increased to approximately 900 by the irst quarter of 1937, and by May 20, 1937, had further in-reased to approximately 1100.

II. The Organizations Involved

United Electrical and Radio Workers of America is a abor organization affiliated with the C. I. O., admitting to s membership all production and maintenance employees f the respondent, excluding clerical and supervisory em-loyees.

Metal Polishers, Buffers, Platers and Helpers, Interna-onal Union, Local No. 3, herein called the Polishers Union, a labor organization affiliated with the A. F. of L., ad-itting to its membership all metal polishers, buffers, and laters, and their helpers, employed by the respondent.

International Association of Machinists, District No. 54, erein called the Machinists Union, is a labor organization filiated with the A. F. of L., admitting to its membership l machinists employed by the respondent.

International Molders Union of North America, Local o. 430, is a labor organization affiliated with the A. F. of , admitting to its membership all molders employed by e respondent.

Pattern Makers Association of Cleveland and Vicinity a labor organization affiliated with the A. F. of L., ad-tting to its membership all pattern makers employed by e respondent.

Federal Labor Union No. 18907 is a labor organization affiliated with the A. F. of L., admitting to its membership all production and maintenance employees of the respondent, except clerical and supervisory employees and employees who are eligible for membership in any of the above-mentioned unions affiliated with the A. F. of L.

III. The Unfair Labor Practices

A. Interference, Coercion and Restraint

Respondent's Labor Relations Prior to March 1937

In 1934 the Machinists Union,[5] succeeded in signing up and obtaining partial payment of initiation fees by a considerable number of respondent's employees. Organizational efforts were not pressed further. By March 1935, most of those who had enrolled had been dropped for nonpayment of dues, and few, if any of the respondent's employees were members of the Machinists Union.

Meanwhile, in the first part of 1934, most of the polishers in respondent's employ were organized in the Polishers Union; and all of the polishers had joined by March 1935, at which time a strike was called by Mechanic Educational Society, another labor organization, hereinafter referred to as the M. E. S. A.

During 1934 a shop committee chosen by the polishers, demanded and secured recognition of the Polishers Union by respondent as representative for collective bargaining for the polishers. The committee also adjusted wages and grievances concerning working conditions, but no agreement was entered into by respondent.

There was no testimony that any contract was made between respondent and the Polishers Union, providing for wages, hours or working conditions for polishers, and such testimony as there was to the effect that a closed shop was agreed upon is unconvincing and, in part, inconsistent with the undisputed facts.

R. B. Wilson, executive vice president of the company, testified that prior to 1935 there was such a closed-shop

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[5]Apparently none of the other A. F. of L. Affiliates participated in this campaign.

contract "for years and years," but he did not know "for how many years back" it had existed, admitted it did not have "a beginning or ending time," and finally admitted there was no written agreement. Moreover, although Wilson testified that during this period, the people who were employed in the polishing department were employed through the polishers union. William Behrse, chairman of the polishers committee in 1934, and thereafter a member of the committee, testified without contradiction, that only a few of the polishers were members of the Polishers Union in 1932 and 1933; and W. E. Wilson, Leonard Trask and Edward Wilson, polishers called as witnesses by the intervenors, testified that they had worked for respondent from 1925, 1929 and 1933, respectively, but had not joined the union until 1934.

Ray Muehlhoffer, business agent of the Polishers Union, contradicted Wilson by placing the earliest efforts at collective bargaining on behalf of the polishers as occurring in 1934. Muehlhoffer testified that in 1934, while he was an employee member of the polishers shop committee, the polishers "demanded collective bargaining rights" on the ground that it then represented a majority of the polishers. He limited himself, however, to the statement that "It was agreed at that time that our organization would represent the Polishing Room." Muehlhoffer also testified that during negotiations in June, 1935, between the A. F. of L. Affiliates and the respondent, "the organizations were asking for an entirely closed shop. I think the reason for asking that was that we had already established that condition." But by "condition" we understand only that Muehlhoffer referred only to the fact that at the time all polishers were members of the Polishers Union, and did not purport to state that respondent had made any agreement to that effect.

On the other hand Behrse, who was certainly in a position to know, categorically denied that respondent made any closed-shop agreement with the Polishers Union.[6]

[6]Behrse not only testified that there was no "agreement at all" respecting a closed shop but also denied that membership in the Polishers Union was a condition of employment, though new men were solicited by the committee. We conclude the somewhat confused testimony of W. E.

He was corroborated by Arthur Kruse, another polisher and Howard Lowrance, a welder working in the polishing department, both employed by respondent since 1929, and both of whom testified they had never heard of any closed-shop agreement.

We find that in March, 1935, all polishers, though by no means all persons employed in the polishing department, were members of the Polishers Union; membership in other A. F. of L. Affiliates was limited to, at most, a few members of the Machinists Union; no collective agreements existed between respondent and its employees or their representatives, though the Polishers Union had, for something less than a year, been recognized as the bargaining agent of the polishers.

Beginning about October, 1934, M. E. S. A. had begun to organize respondent's employees, except those employed as polishers. In March, 1935, M. E. S. A., which meanwhile had enrolled some employees as members, called a strike to secure a wage increase.

The M. E. S. A. strike continued for about 10 weeks. Negotiations with respondent developed into a series of deadlocks. Finally, a group of the strikers asked the A. F. of L. officials to negotiate as their representatives. The A. F. of L. officials declined on the ground that the Polishers Union was the only A. F. of L. organization in a position to represent any of the employees, but offered to undertake negotiations with the management if shown that a majority of the employees were willing to become members of the appropriate craft unions of the A. F. of L. and, in cases where there was no appropriate craft union, an A. F. of L. Federal Union.

The group which had appealed for aid shortly succeeded in signing up 176 strikers. The A. F. of L. officials declined to enter into negotiations on behalf of such a minority but, upon assurances that a majority could be obtained, held an organizational meeting in the A. F. of L. Metal Trades Hall, which a large number of the employees at

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Wilson, a polisher and John Fox, assistant foreman of the polishing department as to a closed-shop contract related to the alleged agreement made between respondent and the A. F. of L. Affiliates in June 1935 (see infra).

tended. A proposed contract was submitted to the meeting and after discussion it was voted to approve such an agreement and to return to work if respondent would sign. The A. F. of L. officials then entered into negotiations with respondent, stating that they represented a majority of the employees. Respondent insisted, that because of the claims made by M. E. S. A., the A. F. of L. Affiliates should produce proof that a majority of the employees had become members. This the A. F. of L. Affiliates were unable to do at that time, but the negotiations proceeded upon their promise that the proof would be forthcoming.

On June 22, 1935, immediately after membership cards for 608 of the then approximately 799 employees were presented to respondent and checked, respondent and the A. F. of L. Affiliates entered into a written contract for 1 year, which provided for seniority, an 8-hour day and a 40-hour week. The plant reopened on the following Monday and the employees returned to work.

In the course of the negotiations with respondent, the A. F. of L. officials demanded a completely closed-shop agreement. Respondent took the position that it would not be fair to its employees, many of whom had been working there for years, to require them to join an organization, but made the counter-proposal that all employees hired thereafter should be required after a work-probation period of 2 weeks to become members of the appropriate A. F. of L. union. The counter-proposal was accepted but was not incorporated into the written agreement.

On July 6, 1936, the written agreement was renewed with one minor change in its provisions, to be effective as of June 24, 1936, and to run until June 23, 1937. The A. F. of L. Affiliates, who were again required to prove their majority, presented membership cards of 771 of the approximately 809 employees. Comparison of the July, 1936, pay roll with the June, 1935, pay roll shows that approximately 709 of those who had been employed June 22, 1935 (whom we will refer to as the old employees) were still employed, and that the other approximately 100 persons had been hired subsequent to June 22, 1935.

In negotiating the 1936 contract, the A. F. of L. Affiliates, whose membership now included all but approximately 38 of respondent's employees, renewed their demand for a closed-shop contract but accepted instead an oral renewal of previous agreement relating to new employees.

It is contended that the oral agreements were not limited in their application to persons hired subsequently (whom we will refer to as the new employees). It is claimed that under the oral agreements, old employees who were members of the A. F. of L. Affiliates at the time they were entered into were required to remain members in good standing and that other old employees, though under no obligation to join the A. F. of L. Affiliates, were required upon becoming members to maintain such membership. It is further contended that the employees were notified of the terms of the oral agreements. We find none of these contentions sustained by the evidence. We are satisfied that the oral agreements related only to new employees, that the employees were never notified of their existence.

Muehlhoffer and Ralph Gordon, business agents of the Machinists Union, the only representatives of the A. F. of L. Affiliates who testified to the 1935 negotiations, merely stated that a demand was made for a completely closed-shop contract, that it was rejected, that a proposal was then made that new employees be required to become members and that an agreement was reached upon that basis. Paulus, respondent's superintendent, who stated that he was familiar with the June, 1935, contract, testified that there was no requirement as to old employees, and, that the agreement simply was that "the new people coming in were to join the union."

On June 12, 1936, approximately a week before the expiration of the 1935 contract, respondent's president, Julius Tuteur, wrote to the Director of the Board's Regional Office at Cleveland, with whom respondent had had some conversations. The letter after reciting that respondent was operating under the 1935 contract and that copy thereof was in the Director's possession, added, apparently thereby disclosing for the first time to the Director the

existence of any further agreement, "We further wish to advise you, in confidence, that we said at the time we signed the written agreement with these unions, orally, that each new employee would be required to become a member of the A. F. of L. unions within 2 weeks after date of employment."[7]

R. B. Wilson, who signed both the 1935 and 1936 contracts on behalf of respondent testified with respect to the oral agreement that "from the time of our first entering into an agreement with the American Federation of Labor, it was understood with us that every employee, coming into our shop, would be required at the end of a 2-weeks' period to either join the Federation of Labor or leave."

Muehlhoffer, the only union representative who testified as to the negotiation of the 1936 contract,[8] stated that "In 1936, we again entered into an agreement that, as our relationship on a verbal basis had been satisfactory, we were willing to continue with the verbal agreement, or part of it, but it was insisted again that some of the employees in that plant must come into our organization." R. B. Wilson, however, testified that the oral agreement of 1935 was merely renewed in 1936 and that prior to 1937 respondent did not know whether new employees had joined the A. F. of L. Affiliates.

We conclude that in the 1936 negotiations the A. F. of L. Affiliates sought to enlarge the prior oral agreement so as to include old employees, in other words, to obtain a closed-shop contract. Insistence that "some of the employees in the plant" join the A. F. of L. Affiliates must have related to the old employees. No point was made that the new employees had not joined. On the other hand there would have been no need for modification of the ex-

[7]The letter of June 12, 1936, was offered in evidence to corroborate the testimony that an oral agreement had been made. It, however, reinforces the conclusion we would have drawn independently from the evidence: that the oral agreement was by its terms limited to new employees; that non-incorporation of the oral agreement in written contracts was deliberate; and that employees were not notified of its existence.

[8]John Toth, business representative for the Machinists Union testified that, when he began his duties in the latter part of 1936, Gordon merely informed him that there was an oral agreement that new employees were to become "members of the respective craft organizations."

isting oral agreement if it had already required that the old employees retain their membership in the union, since at most only 38 of them had not joined by that time.

That the oral agreements did not relate to old employees is further shown by the experience of Harold A. Keehl, one of the old employees who joined one of the A. F. of L. Affiliates in the early part of 1936. Later in the year, when he had fallen behind in his dues for 6 months, Keehl was called to the plant office where he was asked by R. W. Waterbury, respondent's accountant, why he had not paid his dues. Keehl answered that he was short of funds, and asked point-blank, "Do I have to belong to the Union as long as it is not a closed shop?" Waterbury, who though respondent's accountant, actively handled respondent's labor relations along with R. B. Wilson and George R. Paulus, general superintendent, answered, "Well, I don't want to discuss that. We have an agreement and the only thing I can tell you, the best thing to do is to pay your dues."[9] Waterbury did not deny the conversation. If there had been any agreement that members of the A. F. of L. Affiliates remain in good standing it is reasonable to believe that Keehl would have been told of its existence on this occasion.

Respondent in its brief submitted after the hearing places considerable reliance upon the testimony of R. B. Wilson that it was announced on the reopening of the plant in 1935, and that employees were thereafter notified by a notice posted on the bulletin board, that they "would be considered as working against the interests of the company and as such subject to discharge" if they "did anything to disturb the peaceful and friendly relationship" between respondent and the A. F. of L. Affiliates with whom it had just contracted. Irrespective of what respondent might then or thereafter have deemed "to disturb the peaceable and friendly relationship,"[10] the caveat did not bring the old employees within the terms of the oral agreement. It did not even give notice to new employees of the exist-

[9] Waterbury and the shop steward arrange for Keehl to pay his arrears in instalments.

[10] Cf. p. 103, infra.

ence of any agreement which required that they become members of the A. F. of L. Affiliates.

To establish that employees were notified of the oral agreement, 11 general employees were called as witnesses by the intervenors. Harry Denner, the only new employee, among the 11 called by the intervenors testified, however, that though he was hired about July 1, 1935, nothing was ever said to him about any requirement that he join a union, and he did not become a member of the A. F. of L. Affiliates until April, 1937.

Matt Denmore who had been president of M. E. S. A. local, testified he "knew" when he joined Machinists Union in August 15, 1935, that "new" men . . . were supposed to be in the union." M. C. Parks, who had been an active member of the M. E. S. A. shop committee, and who also joined the Machinists Union in August, 1935, merely testified that there was such a "general understanding in the shop." Leonard Trask, who testified that he had participated in the 1935 negotiations, discredited himself by testifying that it was a closed-shop agreement whereby "all the employees in the plant . . . were to be members" and that it was so understood among the employees, and he also contradicted other old employees by stating that there were "no discussions" of the agreement. The testimony of the other seven old employees was substantially the same; none of them indicated a source of knowledge other than general plant gossip and rumors; two of them, W. E. Wilson, a polisher, and John Fox, an assistant foreman in the polishing department, "heard" or "understood" that the oral agreement required all employees to be members of the A. F. of L. Affiliates, though W. E. Wilson later modified his testimony to give an equally imaginative version of the agreement: that it was a closed-shop contract as to polishers but required only new employees in other jobs to become members of the A. F. of L. Affiliates.

Notice to employees of the terms of the oral agreement was sought also to be shown by the testimony of R. B. Wilson, Paulus, and Gordon.

Wilson testified that each foreman did his own hiring and advised new employees at the time of employment that

they "would have to join the American Federation of Labor within 2 weeks or would be discharged." Paulus testified that in 1935 he instructed each foreman "to tell every man when he employed him, that he was required to join the Union within 3 weeks from the time he started" and that he checked up on his foreman "at almost regular intervals, asking if they had followed those instructions." Gordon testified that in 1935 it was "the understanding that foremen would so advise new employees." In 1937, Gordon again took charge of the affairs of the Machinists Union at respondent's plant. According to him, he did so in order to bring to respondent's attention the failure of recently hired employees to become members of the Machinists Union; secured permission for one representative of the Machinists Union to talk to the men in the plant; and had Toth, another business representative of the Machinists Union, go through the plant with the shop committee for that purpose. Gordon testified that on this occasion the new men "doubted the custom" and "were called into the respondent's office with all the employees so there could be a verification of the established precedent"; and that, when the new employees nevertheless denied knowledge of the oral agreement, they were contradicted by the foremen.

We are satisfied, from the evidence introduced by respondent and intervenors themselves, that prior to 1937, new employees were not notified of the oral agreement. The testimony that the foremen notified the new men of the agreement, or that they were instructed to do so cannot be reconciled with the fact that, as late as June 12, 1936, respondent expressly stated in a letter that it wished the existence of the agreement to be kept secret. We are unable to accept Gordon's explanation of his version of why the new employees were called to the office or what then transpired. He testified that "the agreement was explained to them and invariably the fellows would say: 'Well, we are sorry we didn't know anything about it' "—yet when he was asked whether he was present, Gordon answered "I believe I was, yes." We also are unable to believe his statement that although the foremen had ad-

vised new employees, when they were hired, that respondent had an agreement with the A. F. of L. Affiliates which required them to become members within 2 weeks, that although such notice was repeated by the business representative of the Machinists Union in the presence of a shop committee, that workers remained so incredulous that it was necessary that there be a further "verification of the established custom," by confrontation by other employees and by foremen.

Finally, if the new employees had been notified of the oral agreement, it is not unreasonable to expect that some of them would have been called as witnesses[11] or that the foremen alleged to have notified them would have been called. Neither were called, although five new employees called as witnesses by the Board had testified that they had not been given notice of the agreement.[12]

Interference, coercion and restraint in March, April and May 1937

In March 1937 employees working in the machine shop were called into respondent's office where they were spoken to by Julius Tuteur, R. B. Wilson, Paulus, Waterbury, and the officials of the A. F. of L.

We have referred to Gordon's testimony that new and old employees were called into the office so that the new employees who denied knowledge of the oral agreement might be confronted by their foreman, and so that the agreement might be "explained" to all employees. Toth, who according to Gordon rounded up the employees, did not mention the alleged confrontations; nor for that matter did anyone else. Toth testified that, on these occasions, Paulus merely told the employees that the company had an

[11]The pay rolls in evidence show at as late as May 20, 1937, of the approximately 1100 persons then employed by respondent, approximately 519 were new employees, and that of the 519, approximately 58 had been hired during the term of 1935 contract, and approximately another 186 had been hired before the events of March 1937 which resulted in the shutting down of the plant. R. B. Wilson testified that the number employed May 20, 1937, in non-supervisory and non-clerical jobs was approximately 1032.

[12]Two of the five, James Mitchell and Rudolph Rummell, were still employed by respondent.

agreement whereby the new employees were required to join the Machinists Union but explained that old employees need not. Moreover Toth admitted that he did not know whether the men to whom Paulus spoke were new or old employees, and that on one occasion, when seven men were called in nothing was stated at the conference to indicate that there was a difference between old and new employees.

Waterbury testified that old employees were summoned to the office "to be sure they understood exactly our contract." Like Toth, he ventured no explanation as to why this was thought necessary or desirable, was uncertain whether any new employees were called in, and professed to be unable to remember whether any of the employees signed union cards in the office.

Paulus testified that the groups called in were from the machine shop, and that they "were old men who had been there a long time, men I felt I knew very well." He stated that they were called in because the officials of the Machinists Union had asked for his "assistance" in signing up new employees. According to Paulus, he, Waterbury and Toth explained the contract to the old employees and asked them to aid in getting the new employees to join the Machinists Union. Paulus did not testify that any new employees were called to the office, admitted that on one visit to the office five of the employees signed cards, and also admitted that Edward Ramsey, an old employee, was discharged when he refused to sign. On that occasion, Paulus testified, there were present with him not only Toth and Gordon, business agents of the Machinists Union, but also Muehlhoffer, business agent of the Polishers Union, and Lenahan, Secretary of the Cleveland Federation of Labor, and that it was Lenahan who asked that Ramsey be discharged.

R. B. Wilson, who also admitted that Ramsey was discharged because of his refusal to join the Machinists Union, recalled that McKinnon, general organizer for the A. F. of L. was also present at the time. Wilson did not purport to explain why the men were called to the office, except to say that he warned them that "any employee of ours who did anything to disturb the friendly relationship existing be-

tween our company and the American Federation of Labor would be considered as operating against the best interests and subject to dismissal." The purport of this warning is to be gathered from a consideration of what was happening in the machine shop meanwhile.

Wilson admitted that on the morning of March 17,[13] Muehlhoffer, business agent of the Polishers Union, and Newman and Rhinehart, members of the polishers committee, advised him "there was some agitation in the machine shop," that he told him they were "unduly alarmed" and that "we would proceed to investigate the matter." Calling the employees to the office was obviously Wilson's idea of an investigation. And the import of the conferences that followed is evident when it is noted that "the agitation in the machine shop" was by then an organized movement among the employees to sign up members for United. Although allegedly about a hundred new employees had been hired in the machine shop since July 1936 and not joined the A. F. of L. Affiliates, that obviously was not the cause of the occurrences of March 1937. Indeed, Gordon's testimony that the Machinists Union sought out the management at this time to obtain permission to solicit new members at their work was transparently untrue in view of the fact that the A. F. of L. Affiliates had had that privilege since 1935. What was at issue was the possible defection of all employees to United. Otherwise, for example, this is no way to account for the admitted presence of Muehlhoffer, business agent of the Polishers Union, Lenahan, Secretary of the Cleveland Federation of Labor, and McKinnen, general organizer of the A. F. of L., in the office when employees from the machine shop, were called in, and Lenahan's admitted role on those occasions.

In our opinion the fear of United first manifested itself in the treatment of Edward Rericha, several days before the first group of employees were called to the office. Rericha, a member of the Polishers Union, had been employed by respondent as a polisher for 11 years. On several

[13] Wilson fixed the occasion as "On the morning of Thursday, March 18th, I believe was the date . . ." Thursday was March 17th. Behrse also fixed the date as Thursday. See infra.

occasions prior to March 11, he discussed the C. I. O. with other men in the plant and suggested that if they "would all belong together" (obviously referring to their belonging to one union rather than the several A. F. of L. organizations), "we would get better results." When Rericha came to work on March 11, he found his time card withdrawn and when he asked the reason was referred to Rinehart, of the polisher committee, who sent him to Muehlhoffer. When he went to the union's office he was accused of talking against the union and of being a member of the C. I. O. for the past 2 months. It appears that he was formally tried for delinquency in dues but because of the protests of his fellow polishers those charges too, were dropped and he was told to return to work March 22.[14]

About March 15, Theodore Vitosky, employed in the machine shop, objected to Toth's efforts to sign up a new employee who had not been promised a steady job, remarking, "It looks like a racket." Toth answered he "didn't have to take that" and obtained Vitosky's name from the timekeeper. The next day Vitosky and four other employees were sent to the office by Sam Wagner, general foreman of the machine shop. Of the five employees, Vitosky and at least one other, Elmer Lejinsky, were old employees.[15] In the office they found Paulus, Waterbury, Toth and some other persons whom Vitosky did not recognize. Before they left the office, Vitosky and his companions had all signed union cards. As we have pointed out respondent offered no explanation for this. We accept Vitosky's testimony that they signed because Paulus asked them to and refused to allow them time to consider the matter.

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[14]Rericha was admittedly late in his dues but had arranged with the secretary of the Union to make payment on pay day, March 12.

[15]Vitosky testified he had been employed almost 9 years. He could not identify by name two of the men who went with him to the office. One, whom he called "Peter Jacobs," does not appear under that designation on the pay roll. The pay rolls, however, do show an "Elmer Ledinsky" (and no one else with a similar name) who must be "Lejinsky," and show him as employed since 1935 in the Machine shop, and still employed there as late as May 20, 1937.

On March 16 Paulus was seen in the machine shop, stopping at machine after machine, and signalling the representatives of the Machinists Union to come over. When Edward Koutnik, employed in that department came to work at 11 o'clock that morning, several hours after the shift began, he found the shop in confusion and was approached by a number of employees who told him that the "A. F. of L. organizers are down here and they are trying to make everybody sign up." Later in the day, Koutnik and Howard Lowrance, a welder in the polishing department who was a member of the United, agreed that Lowrance would arrange for a meeting with a representative of United and Koutnik would pass around word of the meeting. That afternoon, after work, Scott, a United organizer met with about 60 employees. They signed cards and received others which they took into the plant the next morning and began to sign up other employees.

On the morning of March 17, Clyde H. Boyes, a subforeman, and himself an old employee, was sent to the office, together with six others who were old employees from the automatic department of the machine shop.[16] Boyes testified that McKinnon (general organizer for the A. F. of L), and Toth, in the presence of Paulus, Julius Tuteur and four or five others whom he did not recognize tried to get them to sign cards but that after a dispute over initiation fees they returned to work without signing. About 2 o'clock that afternoon Boyes and some of the automatic men were recalled to the office. This time, Paulus said he thought they were intelligent men who would want to hold their jobs and could use their influence on the other employees. Boyes testified that Waterbury then told them "they wanted an answer soon" because the Polishers Union had threatened to strike if the employees in the machine shop did not sign up, and added that this would result in their being "out on the street." Waterbury denied making such

[16]Royes named as his companions, Patrick Barrett, Ed Cauley, Jim Cronie, Ross Green, Andy Hegidus and Louis Young. The pay rolls show all of them were old employees in the machine shop. "Cronie" appears as "Cronnie," Ross Green sometimes appears as "Ross Greene" or "C. R. Greene" (though with the same check number) on the pay rolls. All were still employed as late as May 20, 1937.

a statement but neither he nor anyone else denied that this was the second time in one day that these employees had been called to the office. Nor was there any denial of Boyes' testimony that he and some of the same men were called in again on the morning of March 18. No one can believe, that they were summoned the second and third time for the purpose of being informed as to the existence of the oral agreement. We find Boyes' testimony as to this and the previous visits convincing. On the third occasion Paulus, Wilson, Waterbury, Lenahan, McKinnon and several others were present. Lenahan asked the automatic men to sign a card and when they walked out again without complying Lenahan told Wilson "they should be discharged."

Waterbury's warning on the afternoon of March 17, of a strike by the Polishers Union followed only a few hours after Muehlhoffer had proposed a strike to the polishers committee because the men in the machine shop were "joining C. I. O." Behrse, one of the committee, testified that when no decision was reached Muehlhoffer took Newman and Rinehart, the other two members of the committee, to the office; that on their return Newman, who was chairman of the committee, reported that they had proposed a strike to Wilson, but that the latter had said "it was not necessary, that it was nothing serious about it, but he was going to make them join the American Federation of Labor Union, and if they don't he would fire one or two so the rest of them will join." Though hearsay, this testimony as to the threat being made to Wilson is satisfactorily corroborated by Boyes' testimony as to Waterbury's warning. Wilson, we have noted admitted the visit by Muehlhoffer and the committee. He denied, however, that a strike was threatened or that he had made the statement imputed to him. His denial is not persuasive. He admitted warning those called to the office that if they "did anything to disturb the friendly relationship" with the A. F. of L. Affiliate they "would be subject to dismissal," he gave no explanation of why, after the visit by Muehlhoffer and the committee, Boyes and the other automatic men were twice recalled to the office, and he admitted that on March 18

Ramsey was discharged for refusing to sign a card in the office.

Edward Ramsey, together with "Vargo" or "'Lefty' Fargo," Kiss and "a fellow from the Automatic room" (who seems to have been Louis Young) were sent to the office by Sam Wagner, the general foreman, about 2 o'clock in the afternoon of March 18. Ramsey, Vargo and Kiss were old employees (as was Young).[17] In the office Lenahan acted as spokesman for a group which included Waterbury, Toth, Paulus, Gordon and Muehlhoffer. Ramsey testified that Lenahan said the A. F. of L. "had a contract with the firm and the boys would have to sign up"; that all but Ramsey signed and returned to work; that Ramsey persisted in refusing to sign; that Lenahan then told him he was fired, whereupon, Ramsey went back to the machine shop. No one denied Ramsey's testimony as to what happened to him personally; on the contrary, both Wilson and Paulus admitted that this was what had happened. Nor was there any direct denial made of Ramsey's testimony so far as it related to Vargo, Kiss, and the "fellow from the automatic room." We see no reason to doubt that portion of Ramsey's testimony and find the facts to be as stated by him. We are further impressed by the failure of respondent or intervenor to call as a witness as to what happened in the office a single fellow employee named by Vitosky, Boyes or Ramsey, or for that matter, any other employee, old or new.

As soon as Ramsey left the office, Paulus called in Wagner and told him Ramsey was discharged. The matter did not end there. The employees in the machine shop spontaneously sat down on the job when they heard of the discharge. When Wagner reported this to Paulus, the latter instructed him to send Ramsey back to the office, according to Paulus in order to recall the discharge. Ramsey was not told why he was wanted in the office again and refused to return. Later in the afternoon Paulus went into the ma-

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[17] We have already referred to Louis Young. See note 14, supra. The pay rolls show only one "Vargo" (and no "Fargo" in the machine shop). The "Vargo," "Frank Vargo" was an old employee. The pay rolls also show only one "Kiss," "Gus Kiss," and show he was an old employee. Both Vargo and Kiss were still employed as late as May 20, 1937.

chine shop and asked the men to go home and return t work the next day, but admitted he "didn't say anythin about any discharge." We are satisfied, therefore, that h did not speak to Ramsey at this time, and Ramsey so testi fied.[18]

Only the men in the machine shop sat down. Some o those in other departments quit work, but left at the end o their workday. The men in the machine shop, however, re mained in the plant over night and the next day there wa a general stoppage of work. The sit-down terminated th next afternoon, March 19, when Scott, who had been noti fied of the situation, came into the machine shop and pre sented, with the assent of respondent and the A. F. of L., proposal to the men, whereby work was to resume on March 22 and Ramsey[19] was to be reinstated, "with the under standing that employees shall have the right to join an Union of their own free will."

Apparently before the men left the plant word wa passed that a meeting of the United would be held tha afternoon. After they left the plant over 500 employee attended the meeting and officers were elected. Previously a number of employees in various departments had signed up in United in the plant or on their way to work.

On March 20, respondent inserted an advertisement i a newspaper tersely announcing the closing of the plant o March 22 "as a result of" a letter received from the Cleve land Federation of Labor and the A. F. of L. Affiliates. The letter, dated March 20, stated that, "As the bargaining agent for your employees we request you to temporarily close your plant, pending present negotiations with you relative to matters covered by our contract with you." No

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[18]The testimony of Koutnik on the point is at variance with both Paulus' and Ramsey's and seems clearly erroneous. In the brief submitted after the hearing counsel for respondent argued that Ramsey's discharge was a "mistake" which Paulus immediately sought to rectify. But it is clear that if Paulus ever sought to recall the discharge, he did so only because it had caused a sit-down strike which he wished to get off his hands.

[19]Scott was apparently mistakenly informed that two employees had been actually discharged, which accounts for reference in the statement calling off the strike, to "the reinstating two employees." Wilson also thought that two employees had been discharged.

testimony was offered to explain the reference to "pending present negotiations"; and under the circumstances it must have been a reference to negotiations prior to March 20.

Wilson testified that when the plant was evacuated on the afternoon of March 19, respondent expected to resume operations on its next regular work day, Monday, March 22, and that the first intimation that he had that there was any question about it was a conference "late afternoon" on Saturday, March 20, at the office of respondent's attorney, at which he, Tuteur, respondent's president, and seven or eight A. F. of L. officials were present. The conference, Wilson testified, followed the receipt of the letter dated March 20. But this fails to account for either the reference in the letter to "pending present negotiations," or the publication of the letter in a newspaper on March 20. The conference must have occurred not later than March 19. This is borne out by Wilson's testimony as to what occurred at the conference.

Wilson testified that he, Julius Tuteur, Muehlhoffer and six or seven other representatives of the A. F. of L. were present at the conference and that the A. F. of L. representatives "asked us to close our plant while they might go over the situation and get their lines in order." Wilson testified that he did not know what led to the request "other than very obviously there was a group within the plant that was causing the dissension [sic] within the ranks," that though respondent did not consider "there was any great proportion" of dissenters, they "knew there was a group that was trying, as reported to us at least, to proselyte members of another organization with whom we had a contract." At the conference, according to Wilson, the A. F. of L. officials "said it was an acute situation in our plant and we must close Monday morning or they would not appear for work Monday morning." What the A. F. of L. proposed to do after the shutdown, Wilson testified, was not discussed.

The shut-down on March 22 thus marked the culmination of a week's effort on the part of the respondent to forestall organization of its employees by United. We are satisfied that prior to the shut-down employees were not

advised of the terms of the oral agreement made in 193 and renewed in 1936. Indeed, it is clear from all the cir cumstances that the respondent and the A. F. of L. Affili ates were chiefly concerned in March, 1937, about the ap proximately 630 old employees (out of the total, according to the pay roll, of approximately 932 persons) then em ployed by respondent, none of whom were covered by th oral agreement. We are likewise satisfied that none of re spondent's actions during the week preceding the shut down, nor its publication of the notice of shut-down, no the shut-down itself can be justified by the oral agreement but that, on the contrary, they constituted interference restraint, and coercion of respondent's employees in the exercise of their right to self-organization.

Only by virtue of the proviso contained in Section 8 (3) of the Act, was respondent entitled, prior to March 1937, to require new employees to join the A. F. of L. Affili ates. That right it then had because of the provisions of the agreement made in 1935 and renewed in 1936 when the A. F. of L. Affiliates represented a majority of the em ployees and had not been assisted by any unfair labor prac tice by respondent.[20] However, the rights of old employees guaranteed by Section 7 of the Act were unaffected by the agreement. Obviously the agreement placed no limitation upon their right to become members of the United and to encourage other old employees to become members, or to decline to join, or to drop their membership in the A. F. of L. Affiliates, or to persuade other old employees to do so. Nor did the agreement inhibit old employees from urging such action upon new employees. Of course new employees who forsook or refused to join the A. F. of L. Affiliates after being advised of the oral agreement could be discharged pursuant thereto. But it does not follow that respondent was even entitled to interfere with the efforts of old employees to induce them to join the United

[20] The proviso reads: "Provided, That nothing in this Act . . . shall preclude an employer from making an agreement with a labor or ganization (not established, maintained, or asserted by any action defined in this Act as an unfair labor practice) to require as a condition of em ployment membership therein, if such labor organization is the represen tative of the employees as provided in Section 9(a), in the appropriate collective bargaining unit covered by such agreement when made.

or to change their affiliation from the A. F. of L. Affiliates. The agreement did not purport to give respondent any such right, and if it had would have been invalid.

Employer action permitted by the proviso of Section 8 (3) may be directed only against those employees who have failed to comply with a valid agreement that they shall be members of a particular labor organization. Moreover, the proviso does not permit such action in a case where no notice has been given of the existence of the agreement. The proviso in permitting the employer "to require membership" in a labor organization manifestly implies that the employee shall be advised that the employer's action is taken pursuant to an agreement. Otherwise employees would have no means of knowing whether they were being illegally discriminated against, or whether the employer was simply enforcing a valid obligation. The proviso was hardly intended to permit equivocal employer conduct, so likely to precipitate industrial conflict over what employees, in view of the employer's silence quite reasonably would conclude was an interference with rights guaranteed to them by Section 7 of the Act.

The alleged threat of a strike no more justified respondent in shutting down its plant than the previous threat warranted it in coercing its old employees to sign cards in the Machinists Union or in discharging Ramsey when he refused to do so. The shut-down, which was, in substance, a lock-out, and the announcement thereof were intended to prevent the employees from exercising their right to join United and to assist the A. F. of L. Affiliates to forestall defections. Except for its more dramatic and wholesale character, and hence more coercive effect, respondent's actions in shutting down its plant and publishing the notice were no different from its illegal actions in the days immediately prior thereto.

On Friday, April 2, 1937, United mailed a letter to respondent stating that a majority of respondent's employees had resigned from the A. F. of L. Affiliates and were members of United; that United represented the majority "as to settlement of grievances arising under the

existing contract!"[21] and were ready to return to work under its terms; and that all grievances arising under the contract which affected members of United would thereafter be handled by the United committee signing the letter. Wilson testified that because the office was closed over the week end, the letter was not received until Monday, April 5, a few minutes after the plant had reopened under arrangement with the A. F. of L. Affiliates. Wilson did nothing about the letter other than to send it to counsel for respondent.

We are satisfied that the arrangement under which the plant was reopened on April 5 was exactly set forth in a notice published by respondent in the newspapers on April 3 and 4, 1937, directed to respondent's employees. The notice stated that on July 6, 1936, the respondent, at the employees' request, had entered into a contract with the A. F. of L. Affiliates recognizing them as the employees' duly chosen agents for collective bargaining; that, thereafter, until June 23, 1937, it was agreed that the respondent employ only persons affiliated with the A. F. of L. Affiliates; and that, after conferences with the employees' agents, it was at their request resuming operations April 5, 1937, but only those employees who were members of the crafts under contract with the respondent would be employed. Attempt was made to explain by the testimony of Wilson, Gordon, Toth and Muehlhoffer that it had been agreed between respondent and the A. F. of L. Affiliates on April 3, before the notice was published; that old employees were not to be required to show that they were in good standing with the A. F. of L. Affiliates in order to return to work; that in fact no such requirement was imposed except by the Polishers Union, and that even as to employees within the jurisdiction of the Polishers Union respondent was ignorant of this deviation from the terms of the agreement. We are entirely unable to credit this testimony.

The notice published on April 3 and 4 was on its face a

[21] The "existing contract" obviously meant the written contract of June 1936.

carefully worded document. Admittedly it was not published until approved at a conference at the office of respondent's counsel, attended by officials of the A. F. of L. Affiliates and the Cleveland Federation of Labor. Moreover, nothing had occurred since March 19 to assure the A. F. of L. Affiliates that, if the plant reopened under the 1936 oral agreement applicable only to new employees, they would not again be confronted with the drive to organize the employees into the United. On the contrary on March 31 the A. F. of L. Affiliates had circulated a notice of a special meeting of members for Friday afternoon, April 2, in which it was stated that "conferences have been held with representatives of the Company and it is now our opinion that the only real solution to the problem is proper enforcement of the present agreement, and that no one be allowed to resume work unless affiliated with these organizations." The notice also stated that the A. F. of L. Affiliates were interested in having the plant reopen on that basis on April 5. The meeting of the A. F. of L. Affiliates was held and the proposal adopted.

Under the circumstances we conclude that respondent knew of and acquiesced in the sending out of the notice by the A. F. of L. Affiliates which contained exactly the same misrepresentation as did the notice published by respondent.

The notice sent out by the A. F. of L. Affiliates, and the meeting held pursuant thereto, indubitably were part and parcel of a single plan devised and executed by respondent and the A. F. of L. Affiliates in order to liquidate United activities among respondent's employees and to do so without risking the reaction that might follow upon an announcement that respondent and the A. F. of L. Affiliates had decided to do so by entering into and enforcing a closed-shop agreement.

It was admitted by Toth and Gordon that even before the meeting between respondent and the A. F. of L. Affiliates on April 3 the latter had notified their members to apply for clearance cards in order to get back in the

plant.[22] Toth, moreover, stated that the notice published by respondent on April 3 and 4 had been prepared prior to the meeting on April 3. Gordon admitted that the conferences with respondent during the shut-down were upon the demands by the A. F. of L. Affiliates that the plant reopened "only under strictly closed-shop conditions." Wilson admitted that he had refused to allow two employees to return to work on April 5 because they did not have clearance cards from the A. F. of L. Affiliates, that he knew of other similar cases, and that the agreement was that the A. F. of L. Affiliates should have the final decision as to who would receive a card. Muehlhoffer summed up the agreement made on April 3, as providing that "all the people who go back in there to work the following Monday would carry a card issued by the respective organizations." He also testified that "The entire responsibility of who was to go back in was turned over to the A. F. of L. Unions." Wilson described the agreement in almost the same words. Muehlhoffer also admitted that even before the plant was reopened the Polishers Union had decided that their members who had become officers or committeemen in United would not be given clearance cards.

Muehlhoffer, Gordon and Toth testified that all of the A. F. of L. Affiliates, except the Polishers Union, gave a clearance card to all who applied, but none of them specifically denied the testimony of witnesses called by the Board who told in detail of cards being refused them, testimony, which unlike the general statements by Muehlhoffer, Gordon and Toth, is quite convincing.

Muehlhoffer testified that respondent was not advised that some employees were refused cards. But it is clear, even from Wilson's own testimony that the respondent expected that cards would be refused to some. Wilson admitted that simultaneously with the reopening of the plant on April 5 respondent began hiring per-

[22]The clearance cards, captioned "Authorization for Representation," declared that the employee designated the A. F. of L. Unions as his representative, for collective bargaining for 1 year, and were witnessed by the official issuing it.

sons it had never previously employed, although no additional employees were needed for normal operations. Furthermore, if respondent had not expected the A. F. of L. Affiliates to refuse cards to some employees, Wilson would hardly have "left word at the outside office that I was in no position to discuss matters with any individual and (such individuals) should go through the routine channels." Moreover, it was established by uncontradicted testimony that Julius Tuteur,[23] respondent's president, in the presence of Paulus and Wilson, as well as Frank Lidasil, representative of the Federal Union, was advised by Mitchell France, a member of that union, that he had been refused admittance to the plant on April 9 on the ground that he had no card; and that Tuteur himself had stated that Mitchell would have to obtain a card. Similarly it was shown that William H. Fogarty and Frederick Frank told Paulus of their unsuccessful efforts to obtain a card, only to be advised that a card was essential.

The notice published by respondent unquestionably misrepresented to the employees the terms of the oral agreement of 1936; and the misrepresentation was obviously a deliberate attempt to give the semblance of legality to respondent's conduct immediately prior to the shut-down, to justify the shut-down itself and to conceal the fact that the closed-shop agreement set forth in the notice was of recent and consequently tainted origin. There hardly could have been devised a stratagem more calculated to aid the A. F. of L. Affiliates to retain and regain their members, and to cut the ground from under the employees who had sought to organize a United Group. Not only did the notice present an ultimatum, the respondent thereby also concealed from its employees that what was involved was their legally protected right to make a choice of representatives without thereby risking discharge.

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[23] Although France referred to "John" Tuteur, he indicated that he was not certain of the surname, and clearly showed that he referred to respondent's president by describing the Tuteur to whom he had spoken as "The older Tuteur."

In substance, though not in form, the arrangement effected between respondent and the A. F. of L. Affiliates on or about April 3, 1937, was an abandonment of the oral agreement of 1936 as insufficient to meet the exigencies of the situation and its replacement by a closed-shop contract. By reason of the assistance therefore given to the A. F. of L. Affiliates by respondent through its unfair labor practices during the preceding weeks, the new agreement was unquestionably illegal and void, and its publication and application constituted interference, coercion and restraint of respondent's employees in their rights to engage in union activities.

Whether or not on April 3, 1937, the A. F. of L. Affiliates represented a choice of representatives by a majority of respondent's employees it is unnecessary to decide. For freedom to make such choice had before then been effectively impaired, if not destroyed, by respondent's unfair labor practices. In fact the agreement of April 3, 1937, was merely another act of the same character as the previous interference, restraint and coercion, and differed only in the irrelevant element of formality. The Act does not, however, permit illegality to become transmuted into legality by the embodiment of unfair labor practices in a contract. That device affords neither an estoppel nor a franchise. The proviso of Section 8-(3) carefully negatives such a possibility by excluding from permissible agreements imposing union membership as a condition of employment, an agreement entered into between employers and labor organizations which they have established, maintained or assisted by unfair labor practices. And here there had been such assistance, persistent and solicited, if not demanded, by the A. F. of L. Affiliates. Accordingly, it is plainly unnecessary to determine whether the A. F. of L. Affiliates represented a majority on April 3, 1937, or, if they did, to speculate whether such majority would have been members of that organization but for respondent's actions.

By May 20, 1937, respondent had filled all the jobs that existed on March 22 and had increased its working force to approximately 1100 employees. According to the pay

rolls, approximately 583 of that number were employees who had been with respondent prior to June, 1935, when the first oral agreement was made. As we have stated, employees who resumed their jobs after April 5, 1937, had been required to obtain clearance cards. Gordon testified that on May 20, 1937, there were no old employees who were not members of the A. F. of L. Affiliates and that substantially all other employees had joined.

On May 20, 1937, a new agreement was entered into between the A. F. of L. Affiliates providing for wage increases, for recognition of the A. F. of L. Affiliates as the bargaining agents for all of respondent's employees, and for a completely closed shop. This agreement, which by its terms ran for one year, and thereafter from year to year unless notice of termination was given 30 days before the end of the annual period, was individually approved by the large majority of the employees at a meeting of the A. F. of L. Affiliates held for that special purpose before the contract was executed. But what we have said with respect to the agreement of April 3, 1937, is entirely applicable to the contract of May 20, 1937. In the intervening period respondent had merely continued its unfair labor practices under the guise of performance of a closed-shop agreement which had no validity. Manifestly under such circumstances the majority of the A. F. of L. Affiliates and the purported referendum are irrelevant.

We find that by the various activities set forth above, respondent, during the period beginning in March, 1937 and continuing through May 20, 1937, aided in the organizational activities of the A. F. of L. Affiliates and hindered and impeded the organizational activities of United, and has interferred with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

B. The Discriminations as to Tenure of Employment

The complaint alleges that the respondent, on or about April 5, 1937, and at all times thereafter, failed and refused to recall 28 employees. No evidence was offered with

respect to four of those named, Frank Erzen, Austin Ballard, Frank Hunek and William Krall. As to them the complaint will therefore be dismissed without prejudice.[24] As to each of the remaining 24 the allegations of the complaint were sustained.

Nineteen of the twenty-four employees as to whom we hold discrimination proven were old employees. In their case it is, of course, unnecessary to review the evidence as to the various occasions when they were refused employment because they had not obtained clearance cards, or when they were refused clearance cards, or when, after they had obtained clearance cards, they were refused employment allegedly because their jobs meanwhile had been filled by persons hired for the first time on or after April 5, 1937. We have pointed out in Section III (A) above that these employees were never affected by the oral agreements,[25] and that the agreement of April 3, 1937, furnished no justification for requiring them to be members in good standing of the A. F. of L. Affiliates as a condition of re-returning to work.[26] We have also pointed out in Section III (A) above that pursuant to the latter agreement employment was given only to those who complied with that condition and that the places of those who did not were filled by persons hired to replace them.

The old employees were not required to go through the meaningless gesture of asking to be taken back without a clearance card; and they were within their rights

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[24]Ramsey who was discharged on March 18 and reinstated on March 19 was excluded from the plant when it reopened on April 5, because he had no clearance card. When he sought one the same day he was told his place was filled. He was successful in obtaining a card on April 21 and was given back his job the following day. The complaint sought no recovery for the employment lost by him between April 5 and April 22.

[25]Indeed, three of the old employees, John Kern, Nicholas Kozma and Edward Kern, were never members of the A. F. of L. Affiliates.

[26]It is unnecessary to decide whether application for and acceptance of a clearance card (See note 20, supra) constituted becoming a member of the A. F. of L. Affiliates in the technical sense. We will assume such was its effect, or that in any case the condition was one that could be imposed, pursuant to the proviso clause of Section 8 (3), by agreement between an employer and a labor organization which then represented a majority of the employees and had not been established, maintained or assisted by unfair labor practices.

in not applying for a clearance card. The refusal of employment to them was a fact immediate upon the reopening of the plant, and because respondent never withdrew the conditions improperly imposed, the refusal was a continuing one.

Obviously there is no merit in the contention made by respondent in its brief that in such a case an employer may plead as a defense that an employee tardily applied for reemployment under the illegal condition and was rejected because his place had been meanwhile filled by one never employed before. From and after April 5, 1937, these employees were in the same position as any employee avowedly discharged because of his union activities. That thereafter such an employee obtains reemployment by accepting conditions which the employer had no right to impose merely ends the direct consequence of loss of wages and requires only that that circumstance be taken into account in determining the remedy for the unfair labor practice.

We accordingly find that respondent has at all times failed and refused to recall to employment the following persons employed by respondent when the plant was shut down on March 22, 1937: William Behrse, Steve Dragosa, William H. Fogarty, Mitchell France, Frederick Frank, John Kern, Edward Koutnik, Nicholas Kozma, Arthur Kruse, Howard Lowrance, Joseph Macho, John Masters, Alfred Meissner, George Onda, Edward Rericha,[27] Mike Smith, Arthur Troyan, and Theodore Vitosky. We also find that respondent failed and refused to recall to employment, except for the period from April 26, 1937, until May 10, 1937, Harold Keehl, employed by respondent when the plant was shut down on March 22, 1937.

Keehl's reemployment during this brief period seems quite accidental. He obtained a clearance card on April 9, 1937, returned to work on April 14, was notified by his foreman that he would have to secure the approval of Lidasil of the Federal Union; he did not do so, but returned to the plant on April 26 and worked until May 10

[27] Rericha, we have noted, was not allowed to work after March 11, but had been directed to return to his job on March 22.

when his foreman told him that there was a notice for him to see Lidasil and pay up his dues in order to hold his job. When he was unable to do so at once, Lidasil refused to accept any postponement in payment and said he would be notified when he might present his case to the Union, but he never received such notice. We are satisfied that Keehl's brief period of reemployment was merely a temporary oversight on the part of respondent and presents nothing essentially different from the other cases.

We have pointed out that we find the charge of discrimination also sustained with respect to five new employees. What has been said by us as to the status of old employees on and after April 5, 1937, is no less applicable to them. True, prior to April 3, 1937, they might, after notice of the oral agreement, have been refused employment unless they became or remained members in good standing in the A. F. of L. Affiliates. True also, where a valid agreement is replaced by an invalid one, the earlier agreement may retain its vitality for its original term. But we have found that on April 3, 1937, not only was a new agreement made but the earlier oral agreement was mutually abandoned by respondent and the A. F. of L. Affiliates as useless for their purposes, because of the rise of the United, and the fact that the majority of respondent's employees were subject thereunder to no restraint against their becoming members of United and terminating their membership in the A. F. of L. Affiliates.

Moreover, we find that the oral agreement is irrelevant to the issue of discrimination since its existence was never brought to the notice of the new employees. The only notice they were given was of the agreement of April 3, 1937, an agreement which they were entitled to disregard. Certainly it cannot be said that they were somehow to divine from such a notice the existence of an antecedent valid oral agreement relating to new employees only. We have pointed out in Section III (A) above that an employer may not even pursuant to a valid agreement threaten an employee with discharge for failure to join a labor

organization unless the employee is advised of the existence of the agreement. We see no reason to distinguish the case where the employer shuts down its plant and on reopening, without giving notice of the existence of an agreement, requires membership in a labor organization as a condition for returning to work.

Accordingly we find that the new employees were within their rights in not applying for a clearance card; that by virtue of the notices published on April 3 and 4, 1937, they were refused employment on the reopening of the plant and that the refusal was a continuing one. We accordingly find that respondent has at all times failed and refused to recall to employment Leo Pierret, Jewell Smith, and Joseph Washko, employed by respondent when the plant was shut down on March 22, 1937; and has failed and refused to recall to employment until May 19 and 24, 1937, respectively, James Mitchell and Rudolph Rummell, employed by respondent when the plant was shut down on March 22, 1937, and who have since May 19 and 24, 1937, respectively, been given employment by respondent at their former jobs.

On the basis of the foregoing, we find that respondent, in refusing and failing to recall the aforesaid persons to employment except upon condition that they secure approval of the A. F. of L. Affiliates, has discriminated against said employees with respect to hire and tenure of employment in order to discourage membership in the United and encourage membership in the A. F. of L. Affiliates, and has interferred with, restrained and coerced its employees in the exercise of the rights guaranteed by Section 7 of the Act.

We have pointed out in Section III (A) above that at the time of the shut-down on March 22, 1937, respondent's employees were working on a 40-hour week, and were entitled to seniority, and that these conditions were continued by the contract of May 20, 1937. We have also pointed out that 2 of the 24 employees as to whom the charges of discrimination were sustained were reemployed by respondent. Of these two, Mitchell was earning 57 cents an hour and Rummell 54 cents an hour at the time

of the shut-down on March 22, 1937. Neither of them earned anything from April 5, 1937, to the date of their reemployment.

The following employees were unemployed at the time of the hearing and had had no employment since the plant was shut down on March 22, 1937, at which time their hourly pay was at the rate indicated after their names: France, 58 cents; Koutnik, 73 cents; Koza, 62 cents; Jewell Smith, 43 cents; Mike Smith, 60 cents; and Vitosky, 62 cents.

Keehl and Pierret had been earning 58 and 56 cents an hour, respectively, at the time of the shut-down. Since then, except for Keehl's temporary recall by respondent from April 26 until May 10, 1937, they had worked only at odd jobs, from which Pierret had earned $8 and Keehl an unstated amount, which together with relief he had received, totaled approximately $90.

Fogarty who had received 58 cents an hour prior to the shut-down had been unemployed until May 31, 1937, when he obtained a part-time job at which he had earned approximately $20.90 at the time of the hearing.

At the time of the hearing Dragosa and Macho had temporary jobs from which they had earned approximately $230 and $154.85, respectively, since the closing of the plant, at which time their hourly rate had been $1.05. Washko also had a temporary job at the time of the hearing and had had odd jobs. The amount of his earnings does not appear. Prior to the shutting of the plant his hourly rate had been 57 cents.

At the time of the hearing Frank, Kern, Kruse, Masters, Meissner and Troyan were employed. All but Kern, however, testified that they did not know whether their new jobs were permanent, and Kern stated that he believed his was temporary. Both Frank and Kern had been employed by respondent for 5 years, and were receiving 58 cents an hour before the shut-down. Frank did not obtain employment until May 25, 1937; his new job worked a 9-hour day; in it he had earned $67.20. Kern obtained other employment for the first time on April 28, 1937; and had earned on an average of $25 a

week in his new job. Kruse, Masters, Meissner and Troyan were receiving $1.05 an hour when the plant was shut down. Kruse has been employed by respondent for 7 years; Masters for 14 years; Meissner for 8 years; and Troyan for 3 years. Kruse was unemployed until June 5, 1937, and had earned $30 since, at the daily rate of $5. Masters had obtained employment at least twice prior to the hearing. Altogether he had earned approximately $145, of which approximately $45 had been earned at a job obtained on June 9, 1937, at which he averaged about $7.50 a day. Meissner first secured work May 18, 1937, and had earned $85 at the new job, which paid less than he had received when employed by respondent. Troyan, like Masters had obtained employment at least twice since the shut-down; none of the jobs paid as high a rate as he had received at respondent's, and his earnings for 8 pay periods prior to the hearing totaled only $204.03.

Rericha had been employed by respondent for 11 years and had received an hourly rate of $1.05. He had obtained a job for the first time on June 11, 1937. His earnings do not appear.

C. The Alleged Refusal to Bargain

No evidence of refusal to bargain was offered except the dispatch by United of the letter dated April 2 which we have summarized in connection with Point I (A) above. In that connection we have also pointed out that the letter was not shown to have been received prior to the reopening of the plant on April 5, 1937, and that no answer was ever sent. Respondent's continued insistence upon membership in the A. F. of L. Affiliates as a condition of return to work was, however, at least equivalent to a categorical rejection of the demand set forth in the letter.

There was put in evidence a list of 543 names prepared by March 26, 1937, purportedly, from signed application cards of United. The list was prepared in connection with a meeting called by United to secure a declaration by those who had been members of the A. F. of L. Affiliates that they wished to sever such affiliation. Not more than

300 of those attending the meeting indicated such a wish. The evidence does not show how many others were present but did not speak up though they were members of the A. F. of L. Affiliates, or how many of those present had never become members of the A. F. of L. Affiliates before joining the United.

Comparison of the list of March 26, 1937, with the 923 names on respondent's pay roll for the week preceding the shut-down of the plant indicates at least that approximately 500 of the 543 names correspond with those on the pay roll. However, the purpose for which the meeting of March 26, 1937, was held, indicates the United representatives felt employees had not understood that by signing application cards in United they thereby disavowed the right of the A. F. of L. Affiliates to represent them. We do not decide, however, whether the inference to be drawn from the fact of the meeting is overcome by any other evidence[28] since the evidence as to the preparation of the list itself is not sufficient to authenticate it as having been prepared from the application cards.

Lowrance, financial secretary and treasurer of the United local organized among respondent's employees, testified that he had received 623 signed application cards of United. He testified that 50 of the cards had disappeared from United's office and submitted the remaining 573 cards for confidential inspection of the Trial Examiner. Apparently the 623 cards represented an increment of 80 cards at some time since March 26, 1937. Lowrance, however, indicated no personal knowledge as to whether all the cards bore the names of respondent's employees, and, in view of what we have found with respect to the list of May 26, 1937, we cannot say such was the case. Since United was unwilling to permit inspection of the cards by respondent or the A. F. of L. Affiliates, they were refused admission in evidence.

We find that the evidence does not establish that the

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[28]The United application card stated that the applicant authorized and requested United "to represent me for the purposes of collective bargaining in regard to wages, hours and working conditions for a period of one year."

United at any time represented a majority of respondent's employees within an appropriate unit. We will therefore dismiss the amended complaint, in so far as it alleges that respondent has engaged in unfair labor practices within the meaning of Section 8 (5) of the Act.

IV. The Effect of the Unfair Labor Practices Upon Commerce

We find that the activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate and substantial relation to trade, traffic, and commerce among the several States, and have led and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

It is essential in order to effectuate the purposes and policies of the Act that the respondent be ordered to cease and desist from the unfair labor practices in which we have found it to have engaged, and in aid of such order and as a means for removing and avoiding the consequences of such practices, that the respondent be directed to take certain affirmative action, more particularly described below.

We have found that on April 3, 1937, respondent entered into an agreement, supplementary to a written agreement made on July 6, 1936, which provided for wages, hours and general working conditions. We have found that said supplementary agreement provided that membership in the A. F. of L. Affiliates would be a condition of continued employment by respondent of persons then in its employ and a condition of employment of persons thereafter employed by respondent. We have found that by reason of assistance theretofore rendered to said A. F. of L. Affiliates by various unfair labor practices set forth above, said supplementary agreement was not within the proviso clause of Section 8 (3) of the Act. We accordingly found that said supplementary agreement, respondent's publication thereof and actions in accordance therewith

constituted interference, restraint, and coercion of respondent's employees in the exercise of the rights guaranteed under the Act. We have accordingly found that respondent by making said supplementary agreement, publishing the same, and acting in accordance with its terms at all times until May 20, 1937, further assisted said A. F. of L. Affiliates by unfair labor practices. We have further found that on May 20, 1937, respondent entered into a superseding agreement with the A. F. of L. Affiliates which incorporated the terms of said supplementary agreement. We have found that by reason of the assistance theretofore rendered to said A. F. of L. Affiliates by respondent by the various unfair labor practices set forth above, including the supplementary agreement of April 3, 1937, respondent's publication thereof and actions in accordance therewith, the provisions of said agreement of May 20, 1937, providing that employment by respondent should be conditioned upon membership in said A. F. of L. Affiliates was not an agreement which was with said proviso clause of Section 8 (3) of the Act. We accordingly found that said agreement constituted interference, restraint, and coercion of respondent's employees in the exercise of their said rights. It is plain that under these circumstances that to render our cease and desist order effective it is necessary that respondent be specifically directed to cease giving effect to so much of said agreement of May 20, 1937, as imposes said condition of employment.

Effectively to remedy the situation created by said interference, restraint, and coercion by respondent it is also necessary to direct that respondent shall not refuse to confer directly with any employees concerning any grievance respecting wages, hours and working conditions. The agreement of May 20, 1937, provides that such matters shall be handled through a shop committeeman of the A. F. of L. Affiliates in the first instance and thereafter through the officials of the A. F. of L. Affiliates. We do not doubt that an employer may, because of his unfair labor practice antecedent to such agreement, be ordered to cease and desist from enforcing such a provision, or to cease and desist unless he accords employees like privilege to be represented

by other labor organizations in presenting grievances. Certain it is that under the the circumstances previously set forth, the interference, restraint and coercion by respondent will in large measure be continued if respondent is permitted to require employees to present such grievances exclusively through the A. F. of L. Affiliates.

We have pointed out that by reason of respondent's interference, restraint and coercion its employees were not free at any time since April 3, 1937, to exercise freely their right to designate or select representatives for collective bargaining. Yet, by its terms, the agreement of May 20, 1937, has renewed itself for a second, and now for a third year. To permit the renewal provision of a contract entered into under such circumstances to have force and effect even if another labor organization were hereafter designated by the employees as their representative would itself serve only to interfere with, restrain and coerce employees from designating such other labor organization. While under the special circumstances of the present case, we are not inclined to hold it necessary to require respondent to disavow altogether the agreement of May 20, 1937, in order to permit an unfettered choice by employees of their representatives, we do find it unquestionably necessary, so as to remove the effect of respondent's interference, coercion and restraint, since March, 1937, to require that respondent shall cease and desist from giving any effect to said agreement if, as and when another labor organization, shall have been designated by its employees for the purpose of collective bargaining.

We have also found that respondent discriminated, within the meaning of the Act, in regard to hire and tenure of employment of William Behrse, Steve Dragosa, William H. Fogarty, Mitchell France, Frederick Frank, Harold Keehl, John Kern, Edward Koutnik, Nicholas Koxma, Arthur Kruse, Howard Lowrance, Joseph Macho, John Masters, Alfred Meissner, James Mitchell, George Onda, Leo Pierret, Edward Rericha, Rudolph Rummell, Jewell Smith, Mike Smith, Arthur Troyan, Theodore Vitosky, and George Washko, by failing and refusing to recall said persons to employment on April 5, 1937, or at any

time thereafter, except that Mitchell was recalled to employment on May 19, 1937, and Rummell on May 24, 1937, and Keehl was temporarily called to re-employment from April 26, until May 10, 1937. Accordingly, we shall order respondent to make these employees whole for any loss of pay they have suffered by reason of said failure and refusal to recall them to employment,[29] by payment to each of them of a sum of money equal to the amount he would normally have earned as wages from April 5, 1937, to the date of reinstatement or placement on a preferential list as hereinafter provided, less his net earnings[30] during said period.[31] However, since we, on our own motion, gave notice on March 16, 1939, of intention to vacate, and on April 11, 1939, vacated the decision and order issued by the Board on July 7, 1938, the respondent will be relieved from paying said employees back pay with respect to the period from March 16, 1939, to the date of our present order.

The employees whom we shall order made whole other than Mitchell and Rummell shall be reinstated by the respondent in the manner set forth below. We are of the opinion that the usual remedy in such cases is here necessary to effectuate the purposes and policies of the Act. Accordingly, we shall order the respondent, upon application, to offer these employees reinstatement to their former or substantially equivalent positions. All, or such num-

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[29] The circumstance that Rummell was ill for a period of 2 or 3 weeks between April 5 and May 24, 1937 will, of course, be taken into account in determining his loss of pay during said period.

[30] By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See Matter of Crossett Lumber Company and United Brotherhood of Carpenters and Joiners of America, Lumber and Sawmill Workers, Local 2590, 8 N. L. R. B. 440. Monies received for work performed upon Federal, State, county, municipal or other work-relief projects are not considered as earnings, but, as provided below in the order, shall be deducted from the sum due the employee and the amount thereof shall be paid over to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said work-relief project.

[31] This is the same affirmative action as was ordered by the Board on July 7, 1938, with respect to said employees.

ber as may be necessary, of the employees hired by the respondent after April 5, 1937, and not in the employ of the respondent on March 19, 1937 shall be dismissed to provide employment for those to be offered, and who under our order apply for, reinstatement. If thereupon, despite such reduction in force, there is not sufficient employment immediately available for the employees presently employed by the respondent, excluding those so dismissed, and the employees to be offered and who apply for reinstatement, all available positions shall be be distributed among the employees presently employed, except those so dismissed, and the employees to be offered reinstatement, in accordance with the respondent's usual method of reducing its force, without discrimination against any employee because of his union affiliation and activities, following such a system of seniority or other procedure to such extent as has heretofore been applied in the conduct of said respondent's business. In making such distribution the employees to be offered reinstatement shall be considered as entitled to the seniority and other rights and privileges which would have been theirs had respondent not failed and refused to recall them to employment on April 5, 1937.

Those employees remaining after such distribution, for whom no employment is immediately available, shall be placed upon a preferential list with priority determined among them by such system of seniority or other procedure as has been heretofore followed by the said respondent, and shall thereafter, in accordance with such list, be offered employment in their former or in substantially equivalent positions, as such employment becomes available and before other persons are hired for such work.

VI. The question concerning representation

We have pointed out in Section III above that the United, claiming to represent a majority of the respondent's employees, has unsuccessfully sought to bargain with the respondent. We have also noted that the United, on April 22, 1937, filed a petition for certification as the representative of respondent's employees. The A. F. of L. Affiliates also claim to represent a majority of respondent's employees.

We have further pointed out in Section III above that from about March 16 until April 3, 1937, the majority of respondent's employees and that from and after April 3, 1937, all of respondent's employees were unable because of respondent's interference, restraint, and coercion to exercise freely their right to designate or select representatives for the purposes of collective bargaining. Since respondent's said interference, restraint and coercion was directed toward requiring its employees to designate or select the A. F. of L. Affiliates as their representatives for the purposes of collective bargaining, the contention cannot be sustained that no question of representation exists because of the contract entered into between respondent and the A. F. of L. Affiliates on May 20, 1937; and the automatic yearly renewal clause contained in the contract negotiated under such circumstances cannot excuse respondent from the duty instanter to bargain collectively with United, should the latter be designated by its employees as their representative for collective bargaining.

We find that a question has arisen concerning the representation of employees of respondent.

VII. The effect of the question concerning representation on commerce

We find that the question concerning representation which has arisen, occurring in connection with the operations of the respondent described in Section I above, has a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

VIII. The appropriate unit

The United contends that all of the production and maintenance employees at the respondent's plant, excluding supervisory and clerical employees, constitute a unit appropriate for purposes of collective bargaining. The respondent's plant is organized upon a mass-production basis, and the various departments in it are so closely re-

lated functionally that the plant cannot run unless each department is operated.

We have pointed out in Section III above that the contracts between the respondent and A. F. of L. Affiliates have always been on a plant-wide basis. The A. F. of L. Affiliates have always decided to which of the five organizations employees were to be allocated, and the parties have never concerned themselves with whether the membership of any one of the A. F. of L. Affiliates constituted a majority of the employees eligible to membership in that particular organization.[32]

We have pointed out above that, in its answer to the charge of unfair labor practices within the meaning of Section 8 (5) of the Act, respondent admitted that the plant-wide unit was appropriate. In the exceptions filed with the Board by respondent on July 16, 1938, respondent excepted to various findings of fact and conclusions of law in our decision issued July 7, 1938, relating to the existence of a question concerning representation and the effect of such question on commerce, but did not except to our finding of fact and conclusion of law that the plant-wide unit was appropriate.

At the hearing and in the briefs thereafter filed neither the A. F. of L. Affiliates nor the Cleveland Federation of Labor suggested that a plant-wide unit was inappropriate. On August 4, 1938, the A. F. of L. Affiliates filed objections to the findings of facts and conclusions of law in said decision issued July 7, 1938, which related to the appropriate unit, and moved that such findings and conclusions be vacated, and that in lieu thereof findings of fact and conclusions of law be made to the effect that the member of each particular labor organization included in the A. F. of L. Affiliates are an appropriate unit. In support of said objection and motion, the A. F. of L. Affiliates pointed to no evidence in the record, except that each of the A. F. of L. Affiliates was a separate and autonomous labor organiza-

[32] The testimony also shows that to some degree whether an employee is within the jurisdiction of one or another of the A. F. of L. Affiliates has been determined not so much by the nature of the work performed by him as by the nature of the work performed in the department in which he worked.

tion, fact which we had recognized and which is, of course, not affected by the determination of the appropriate unit.

We find that the production and maintenance employees at the respondent's plant, excluding clerical and supervisory employees, constitute a unit appropriate for purposes of collective bargaining, and that said unit will insure to the employees at the respondent's plant the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.[33]

IX. The Determination of Representatives

We have pointed out above that a question has arisen concerning representation of employees of respondent. We find that, because of the circumstances set forth in Section III, the question which has arisen can best be resolved by an election by secret ballot.

We shall not, however, at this time fix the date for the holding of the election since we are of the opinion that the election should not be held until sufficient time has elapsed to permit a free choice of representatives unaffected by the respondent's unfair practices. We shall at the time we specify the date on which the election is to be held also specify the date on the basis of which eligibility to vote in the election shall be determined.

Upon the basis of the foregoing findings of fact and the entire record in the proceeding, the Board makes the following:

Proposed Conclusions of Law

1. International Holders Union of North America, Local No. 430; Pattern Makers Association of Cleveland and Vicinity; Metal Polishers International Union, Local No. 3; International Association of Machinists, District

[33]The A. F. of L. Affiliates also moved for leave to adduce additional evidence in support of their contention as to the appropriate unit. Such further motion was denied without prejudice to renewal at such time thereafter as the Board might direct an election to be conducted. Under the circumstances we believe that should the A. F. of L. Affiliates still desire to be permitted to adduce such additional evidence that the facts sought thereby to be shown shall be set forth in full in connection with and as part of any exceptions or objections which the A. F. of L. may fill with respect to our proposed decision, order and direction of election.

No. 54; Federal Labor Union No. 18907; and United Electrical & Radio Workers of America are labor organizations within the meaning of Section 2 (5) of the Act;

2. The respondent, by discriminating in regard to the hire and tenure of employment of William Behrse, Steve Dragosa, William H. Fogarty, Mitchell France, Frederick Frank, Harold Keehl, John Kern, Edward Koutnik, Nicholas Kozma, Arthur Kruse, Howard Lowrance, Joseph Macho, John Masters, Alfred Meissner, James Mitchell, George Onda, Leo Pierret, Edward Rericha, Rudolph Rummell, Jewell Smith, Mike Smith, Arthur Troyan, Theodore Vitosky, and George Washko, thereby encouraging membership in the first five labor organizations mentioned in paragraph 1 above, and discouraging membership in United Electrical & Radio Workers of America, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

3. The respondent, by interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, has engaged and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

5. The respondent has not engaged in unfair labor practices within the meaning of Section 8 (5) of the Act.

6. A question affecting commerce has arisen concerning the representation of employees of Electric Vacuum Cleaner Company, Inc., Cleveland, Ohio, within the meaning of Section 9 (c) and Section 2(6) and (7) of the Act.

7. The production and maintenance employees of the said company, excluding clerical and supervisory employees, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

PROPOSED ORDER

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the Na-

tional Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Electric Vacuum Cleaner Company, Inc., and its officers, successors, and assigns, shall:

1. Cease and desist:

(a) From discouraging membership in United Electrical & Radio Workers of America or any other labor organization by refusing to reinstate, or otherwise discriminating against its employees in regard to hire and tenure of employment, or any term or condition of employment;

(b) From encouraging membership in International Molders Union of North America, Local No. 430; Pattern Makers Association of Cleveland and Vicinity; Metal Polishers International Union, Local No. 3; International Association of Machinists, District No. 54; Federal Labor Union No. 18907; or any other labor organization by discharging, refusing to reinstate, or otherwise discriminating against its employees in regard to hire or tenure of employment, or any term or condition of employment;

(c) From in any other manner interfering with, restraining, or coercing its employees in the exercise of the rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act;

(d) From giving any effect to the provisions of paragraph (d) of Article III of the agreement dated May 20, 1937, that: "The Employer[34] agrees to employ only members of the Unions[35] in good standing in their respective Unions, and should the employer require more employees than those now employed, the Employer will secure such employees through the Union. If, however, the Unions are unable to furnish such employees, the employer may secure them elsewhere, it being understood, however, that such employees so secured shall become members of the Union";

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[34] I. e., respondent, Electric Vacuum Cleaner Company, Inc.

[35] I. e., the labor organizations designated by name in paragraph 1(b) of this Order.

(e) From refusing to confer directly with any employee concerning any matter covered by any of the provisions of paragraph (a) of Article IV of said agreement dated May 20, 1937, that: "Any Employee who believes he or she has been unjustly treated shall complain to his or her Committeeman who shall take the complaint directly to the foreman involved; failing in satisfactory adjustment with the foreman, the Committee member shall take the matter up directly with the proper Union officials for adjustment";

(f) From giving any effect to said agreement dated May 20, 1937, in the event that any labor organization other than the labor organizations party thereto shall hereafter be designated or selected as representative for the purposes of collective bargaining by the production and maintenance employees of respondent, exclusive of clerical and supervisory employees.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Offer, upon application, to William Behrse, Steve Dragosa, William H. Fogarty, Mitchell France, Frederick Frank, Harold Keehl, John Kern, Edward Koutnik, Nicholas Kozma, Arthur Kruse, Howard Lowrance, Joseph Macho, John Masters, Alfred Meissner, George Onda, Leo Pierret, Edward Rericha, Jewell Smith, Mike Smith, Arthur Troyan, Theodore Vitosky, and George Washko, reinstatement to their former[36] or substantially equivalent positions with the respondent, without prejudice to their seniority and other rights and privileges. All of the employees presently working for the respondent who were hired since March 19, 1937, and not in its employ on March 19, 1937, shall, if necessary, be dismissed to provide employment for the above employees ordered to be offered and who apply for reinstatement. If, for such purpose, it is necessary to dismiss some but not all such employees, such number as may be necessary shall be dismissed by the respondent, such dismissal proceeding from among all in

[36] By former position is meant the respective position held March 19, 1937.

the class on a non-discriminatory[37] basis, and the positions which remain after dismissal shall be distributed by the respondent on a non-discriminatory basis among those in the class not dismissed. If despite and after a dismissal of all employees presently working for the respondent who were hired since March 19, 1937, and not in its employ on March 19, 1937, there is not sufficient employment immediately available for the employees presently working for the respondent, excluding those dismissed, and for the employees above ordered to be offered and who apply for reinstatement, then all positions of employment shall be distributed by the respondent among the employees presently working for it, excluding those dismissed, and the employees above ordered to be offered or who apply for reinstatement, in accordance with the respondent's usual method of reducing its force, without discrimination against any employee because of his union affiliation and activities, following such a system of seniority or other procedure as has been heretofore applied by the respondent in the conduct of its business. Those employees remaining after such distribution for whom no employment is immediately available, shall be placed by the respondent on a preferential list, with priority determined among them in accordance with such system of seniority or other procedure as has been heretofore applied by the respondent in the conduct of its business, and thereafter, in accordance with said list shall be offered reinstatement by the respondent in their former or substantially equivalent positions, as such employment becomes available and before other persons are hired for such work;

(b) Make whole the following named employees for any loss of pay they have suffered by reason of failure or refusal to recall them to employment on April 5, 1937, and thereafter, by payment to each of them of a sum of money equal to the amount which he normally would have earned as wages from April 5, 1937, to March 16, 1939, and from the date of this Order to the date of his reinstatement or placement on a preferential list pursuant to paragraph (a)

[37] That is, without discrimination against any employee or any group of employees because of union affiliation or activities.

above, less his net earnings[38] during said period; deducting, however, from the amount otherwise due to each such employee, monies received by him during said period for work performed upon Federal, State, county, municipal, or other work-relief projects, and pay over the amount, so deducted, to the appropriate fiscal agency of the Federal, State, county, municipal or other government or governments which supplied the funds for said work-relief projects: William Behrse, Steve Dragosa, William H. Fogarty, Mitchell France, Frederick Frank, John Kern, Edward Koutnik, Nicholas Kozma, Arthur Kruse, Howard Lowrance, Joseph Macho, John Masters, Alfred Meissner, George Onda, Leo Pierret, Edward Rericha, Jewell Smith, Mike Smith, Arthur Troyan, Theodore Vitosky, and George Washko;

(c) Make whole Harold Keehl for any loss of pay he may have suffered by reason of failure or refusal to recall him to employment on April 5, 1937, and thereafter, except temporarily from April 26 until May 10, 1937, by paying him a sum of money equal to the amount which he normally would have earned as wages from April 5 to April 26, 1937, and from May 10, 1937, to March 16, 1939, and from the date of this Order to his reinstatement or placement on a preferential list pursuant to paragraph (a) above, less his net earnings[39] during said periods; deducting, however, from the amount otherwise due each of them, monies received by him during said periods for work performed upon Federal, State, county, municipal, or other work-relief projects, and pay over the amount so deducted, to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said work-relief projects;

(d) Make whole James Mitchell and Rudolph Rummell for any loss of pay they may have suffered by reason of refusal or failure to recall them to employment on April 5, 1937, and thereafter until May 19 and 24, 1937, respectively, by payment to each of them a sum of money equal to the amount which he normally would have earned as

[38] See footnote 30, *supra.*

[39] See footnote 30, *supra.*

wages from April 5 to May 19, 1937, in the case of James Mitchell and from April 5 to May 24, 1937, in the case of Rudolph Rummell, less his net earnings[40] during said period; deducting, however, from the amount otherwise due each of them monies received by him during said period for work performed upon Federal, State, county, municipal, or other work-relief projects, and pay over the amount, so deducted, to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said work-relief projects;

(e) Immediately post notices in conspicuous places throughout its plant, and maintain such notices for a period of thirty (30) consecutive days, from the date of such posting stating that the respondent will cease and desist in the manner set forth in 1 (a), (b), (c), (d), (e), and (f) and that it will take the affirmative action set forth in 2 (a), (b), (c), and (d) of this Order; and

(f) Notify the Regional Director for the Eighth Region, Cleveland, Ohio, in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.

It is further ordered that the complaint, in so far as it alleges that the respondent discriminated in regard to the hire and tenure of employment of Frank Erzen, Austin Ballard, Frank Hunek, and William Krall, within the meaning of Section 8 (3) of the Act, be, and it hereby is, dismissed without prejudice.

And it is hereby further ordered that the complaint, in so far as it alleges that the respondent has engaged in unfair labor practices within the meaning of Section 8 (5) of the Act, be, and it hereby is, dismissed.

DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Board Rules and Regulations—Series 1, as amended, it is hereby

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[40] See footnote 30, *supra*.

Directed that, as part of the investigation ordered by the Board to ascertain representatives for the purposes of collective bargaining with Electric Vacuum Cleaner Company, Inc., Cleveland, Ohio, an election by secret ballot shall be conducted at such date as the Board may in the future direct, under the direction and supervision of the Regional Director for the Eighth Region, acting in this matter as agent for the National Labor Relations Board and subject to Article III, Section 9, of said Rules and Regulations, among the production and maintenance employees of the said company who were employed by it during a pay-roll period which we shall in the future specify, excluding clerical and supervisory employees, to determine whether they desire to be represented by the American Federation of Labor or by United Electrical & Radio Workers of America, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining, or by neither.

EXCEPTIONS OF ELECTRIC VACUUM CLEANER COMPANY, INC., RESPONDENT, TO STATEMENT OF FACTS, PROPOSED FINDINGS OF FACT, PROPOSED CONCLUSIONS OF LAW AND PROPOSED ORDER OF THE NATIONAL LABOR RELATIONS BOARD

(Docketed July 10, 1939)

Respondent files the following exceptions to the Statement of the Case, Proposed Findings of Fact, Proposed Conclusions of Law and Proposed Order issued by the Board at Washington, D. C., and dated June 21, 1939.

(1) Respondent excepts in the Statement of the Case to (4) of the enumeration of affirmative defenses in Respondent's answer, to the effect that "about July 6, 1936, it had entered into a closed shop contract with the A. F. of L. Affiliates, which ran until June 23, 1937."

(2) Respondent excepts in the Statement of the Case to the affirmance by the Board of the Trial Examiner's overruling of Respondent's motion to dismiss the complaint at the end of the Board's case, for the reason that there was no evidence of any unfair labor practice by Respondent affecting commerce, as defined in the National Labor Relations Act.

(3) Respondent excepts in the Statement of the Case to the affirmance by the Board of the Trial Examiner's several other rulings on motions and on objections to the admission of evidence, by Respondent, for the reason that each and every one of such rulings of the Trial Examiner were erroneous, to the prejudice of Respondent.

(4) Respondent excepts to the Statement of the Case in that it fails to show that on February 2, 1939, and on March 4, 1939, respectively, pursuant to Section 10 (f) of the Act, Respondent and International Molders' Union of North America, Local No. 430, and other Unions affiliated with the American Federation of Labor, filed in the United States Circuit Court of Appeals for the Sixth Circuit, a petition to review and set aside the order of the Board entered on July 7, 1938, and that said petitions were dismissed upon the motion of the Board for the reason that no transcript of the record had been filed by the Board, and that on April 11, 1939, the Board entered its order setting aside its findings and order of July 7, 1938.

(5) Respondent excepts to that portion of Paragraph II "The Organizations Involved," of the Board's findings of fact, which finds that United Electrical & Radio Workers of America, is a labor organization admitting to its membership all production and maintenance employees of Respondent (with certain exceptions mentioned in said findings), for the reason that at the time of the occurrence of the matters set forth in the petition, there was no local organization of said United Electrical & Radio Workers of America exercising, or claiming to exercise, jurisdiction over employees of Respondent.

(6) Respondent excepts to "Respondent's Labor Relations prior to March, 1937," of Section A, "Interference, Coercion and Restraint" of paragraph III "The Unfair

Labor Practices" of the Board's findings of fact, and to each and every part thereof finding against Respondent, for the reason that there is no competent or substantial evidence in the record sustaining such findings, and particularly the following:

(a) That prior to 1937 there was no notice to new employees of the oral agreement to the effect that they must join the American Federation of Labor Affiliates, and that such agreement was in any sense secret (Page 7) (Page 9).

(b) That in the 1936 negotiations the A. F. of L. Affiliates sought to enlarge the prior oral agreement so as to include old employees, in other words, to obtain a closed shop contract (Page 8).

(7) Respondent excepts to "Interference, Coercion and Restraint in March, April and May, 1937," of Section A, "Interference, Coercion and Restraint" of Paragraph III of "The Unfair Labor Practices" of the Board's findings of fact, and to each and every part thereof finding that there had been interference, coercion and restraint on the part of Respondent, for the reason that there is no competent or substantial evidence in the record sustaining such findings, and particularly the following:

(a) That R. B. Wilson, or any other officer or supervisory employee of Respondent, threatened to make employees join the American Federation of Labor Affiliates and that "he would fire one or two so that the rest of them will join" (Page 12).

(b) That Respondent was a party to the settlement of the sit-down strike, and that it was adjusted "with the understanding that employees shall have the right to join any Union of their own free will" (Page 13).

(c) That the shutdown on March 22nd, and Respondent's actions and conduct prior thereto, constituted interference, restraint and coercion of Respondent's employees in the exercise of their right to self-organization (Page 14), and that the notice published by Respondent was in any sense an attempt on Re-

spondent's part to give semblance of legality to Respondent's conduct immediately prior to the shutdown (Page 17).

(d) That upon the reopening of the plant on April 5th, reemployment of old employees was limited and restricted to employees in good standing in the A. F. of L. Affiliates (Page 16).

(e) That respondent knew of and acquiesced in the notice sent out by the A. F. of L. Affiliates prior to the reopening of the plant and the notice and meeting prior thereto were part and parcel of a single plan devised and executed by Respondent and the A. F. of L. Affiliates in order to liquidate United activities among Respondent's employees (Page 16).

(f) That the alleged arrangement effected between Respondent and the A. F. of L. Affiliates on or about April 3, 1937, was an abandonment of the oral agreement of 1936, as insufficient to meet the exigencies of the situation, and its replacement by a closed shop contract (Page 18).

(g) That the agreement of May 20, 1937, was procured through coercion and hindered and impeded the organization activities of United (Page 18).

(h) That Respondent's actions, throughout the periods complained of, were not in good faith, and not such as any employer in a similar situation would have followed when attempting to maintain a valid contract which was sought to be invalidated or taken over, by a small minority group attempting to substitute as the contracting party, an organization with which the employer did not then have, and under the existing contract, could not have, contractual relations.

(8) Respondent excepts to Section B "The Discriminations as to Tenure of Employment" of Paragraph III "The Unfair Labor Practices" of the Board's findings of fact, and to each and every part thereof relating to each and every one of the former employees of Respondent named in said Section B, except Frank Erzen, Austin Ballard, Frank Hunek and William Krali, for the reason that there

is no competent or substantial evidence in the record sustaining the Board's said findings, and particularly the following:

(a) That said employees were refused employment by reason of discrimination and in order to discourage membership in United and encourage membership in the A. F. of L. Affiliates (Page 19) (Page 21).

(b) That old employees were not required to procure clearance cards and were within their rights in not applying for same, and that the refusal to accept employees without a card was a continuing one (Page 19), the Board failing to take into consideration, among other things, the fact that the rival Unions involved in the dispute fully understood the clearance card method of reemployment and acquiesced therein through meetings held by the Unions with the Regional Director, at which meetings Respondent was not present.

(c) That the oral agreement is irrelevant to the issue of discrimination (Page 20).

(d) That new employees were within their rights in not applying for a clearance card (Page 20).

(9) Respondent excepts to the finding in paragraph IV "The Effect of the Unfair Labor Practices upon Commerce" of said findings that any activities of Respondent have a close, intimate and substantial relation to trade, traffic and commerce, among the several States, and have led, and tend to lead, to labor disputes, burdening and obstructing commerce and the free flow of trade, for the reason that there is no evidence in the record sustaining such finding.

(10) Respondent excepts to the statement of findings in the second paragraph (Page 23) of Paragraph V "The Remedy," and to the findings which find that to remedy the situation Respondent be directed to take the certain affirmative action described in said section for the reason that there is no competent or substantial evidence in the record sustaining such findings.

(11) Respondent excepts to that portion of paragraph V "The Remedy" of said findings of fact, which finds that

Respondent discriminated, within the meaning of the Act, in regard to the hire and tenure of employment of certain persons named in said paragraph, and that said persons are entitled to be reinstated by Respondent and entitled to back pay, except for the period from March 16, 1939, to the date of the Board's present order, for the reason that there is no evidence in the record to sustain such findings as to said persons, or any of them, and said finding is contrary to law.

(12) Respondent excepts to that portion of paragraph V "The Remedy" of said findings of fact which finds that it is necessary to require Respondent to cease giving effect to part of, and to disavow in any respect the agreement of May 20, 1937, in order to permit "an unfettered" choice by employees of their representatives (Page 24) for the reason that there is no evidence in the record to sustain such findings, and that said finding with respect to said contract is not only not sustained by any competent evidence, but is contrary to law.

(13) Respondent excepts to the findings in Paragraph VI "The Question Concerning Representation," of said findings of fact, that from about March 16th, until April 3rd, 1937, the majority of Respondent's employees, and that from and after April 3, 1937, all of Respondent's employees, were unable, because of Respondent's interference, restraint and coercion, to exercise freely their right to designate and select representatives for the purpose of collective bargaining, and that despite the contract of May 20, 1937, a question of representation exists, for the reason that there is no evidence in the record to sustain such findings, and that said findings, with respect to said contract are not only not sustained by any evidence, but contrary to law.

(14) Respondent excepts to that portion of paragraph VII "The Effect of the Question Concerning Representation on Commerce," which finds that the question concerning representation, referred to therein, tends to lead to labor disputes, burdening and obstructing commerce, and the free flow of commerce, for the reason that there is no evidence in the record sustaining such finding.

Exceptions of Electric Vacuum Cleaner Company, Etc.

(15) Respondent excepts to paragraph 1 of the Board's conclusions of law for the reason that the conclusion contained in said paragraph that United Electrical & Radio Workers of America is a labor organization within the meaning of Section 2 (5) of the National Labor Relations Act, is contrary to law and the evidence.

(16) Respondent excepts to paragraph 2 of said conclusions of law, and each and every part thereof, for the reason that the same assumes a state of facts with regard to each and every one of the persons therein named, which is not supported by any evidence in the record, and said conclusion of law is, therefore, contrary to law and to the evidence.

(17) Respondent excepts to paragraph 3 of said conclusions of law, for the reason that said paragraph 3 assumes that Respondent has interfered with, restrained and coerced its employees in the exercise of rights guaranteed in Section 7 of the National Labor Relations Act, and is engaging in unfair practices within the meaning of Section 8 (1) of the Act, when there is no evidence in the record to sustain such assumption, and said paragraph 3 is, therefore, contrary to law and to the evidence.

(18) Respondent excepts to paragraph 4 of said conclusions of law, for the reason that the same assumes that Respondent is engaged in unfair labor practices, when there is no evidence in the record sustaining such assumption, and that said paragraph 4 is, therefore, contrary to law and to the evidence.

(19) Respondent excepts to Section (a), paragraph 1, "Cease and Desist" of the Board's order, for the reason that there is no evidence in the record that Respondent has engaged in any of the conduct from which, by said Section (a), it is ordered to cease and desist.

(20) Respondent excepts to Section (b), paragraph 1, "Cease and Desist" of the Board's order, for the reason that there is no evidence in the record that Respondent has engaged in any of the conduct from which, by said Section (b), it is ordered to cease and desist.

(21) Respondent excepts to Section (c), paragraph 1, "Cease and Desist" of the Board's order, for the reason

that there is no evidence in the record that Respondent has engaged in any of the conduct from which, by said Section (c), it is ordered to cease and desist.

(22) Respondent excepts to Section (d), paragraph 1, "Cease and Desist" of the Board's order, for the reason that the same is contrary to law.

(23) Respondent excepts to Section (e), paragraph 1, "Cease and Desist" of the Board's order, for the reason that there is no evidence in the record that Respondent has engaged in any of the conduct from which, by said Section (e), it is ordered to cease and desist.

(24) Respondent excepts to Section (f), paragraph 1, "Cease and Desist" of the Board's order, for the reason that the same is contrary to law.

(25) Respondent excepts to Sections (a), (b), (c) and (d) of paragraph 2, "Take the following affirmative action which the Board finds will effectuate the policies of the Act," of the Board's order, for the reason that the same, as it applies to Respondent, and to each and every one of the persons therein named, is contrary to law.

(26) Respondent excepts to Section (e) of paragraph 2, "Take the following affirmative action which the Board finds will effectuate the policies of the Act," of the Board's order, for the reason that the same is contrary to law and commands the performance by Respondent of acts, the requirement of which, by the Board, is contrary to law.

(27) Respondent excepts to Section (f) of paragraph 2, "Take the following affirmative action which the Board finds will effectuate the policies of the Act," of the Board's order, for the reason that it requires Respondent to notify the Regional Director for the Eighth Region what steps Respondent has taken to comply with orders which are contrary to law.

(28) The Board, in failing to decide this case for thirteen (13) months after trial, and by delaying and preventing Respondent's attempt to review the action of the Board herein, and by reopening the case, upon its own motion, and thereafter submitting proposed findings of fact, conclusions of law, and order, in substance the same as the order vacated, has, by such unreasonable delay, prejudiced Re-

spondent's rights, and in case the proposed findings of fact, conclusions of law and order, directing reinstatement of certain employees, become final, and are, thereafter, affirmed, Respondent will be required to pay in back wages a sum greatly in excess of that which would have been payable had the decision been promptly rendered; by reason thereof Respondent excepts thereto.

Respondent,
Electric Vacuum Cleaner Company, Inc.,
By Julius Tuteur,
President.

Dated July 7, 1939.

Attorneys for Respondent,
Spieth, Taggart, Spring & Annat,
By L. C. Spieth.

Copies of the foregoing exceptions were served by counsel for Respondent by registered mail, upon the following:

Joseph A. Padway, Edwin F. Woodle and Bernard Wachtel,
Counsel for International Molders' Union, Local No. 430, et al.

Sam H. Griff,
Counsel for United Electrical & Radio Workers of America, Local 720.

John H. Orgill,
Counsel for Cleveland Federation of Labor.

Harry L. Lodish,
For the Board.

L. C. Spieth,
Of Counsel.

EXCEPTIONS OF INTERVENORS TO PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER AND DIRECTION OF ELECTION

(Docketed July 5, 1939)

To the Honorable, The National Labor Relations Board, Washington, D. C.

Come now the International Molders Union of North America, Local No. 430, Pattern Makers Association of Cleveland and vicinity, International Association of Machinists, District No. 54; Metal Polishers International Union, Local No. 3, and Federal Labor Union No. 18,907, all affiliated with the American Federation of Labor, intervenors in the above entitled proceedings, and set forth the following exceptions to the Proposed Findings of Fact, Proposed Conclusions of Law, Proposed Order and Proposed Direction of Election issued by the Board in the above entitled proceedings:

1. Exception is hereby taken to the following findings contained in Section III of the Proposed "Findings of Fact" for the reason that said findings are erroneous and without support or substantial evidence:

a. The finding that new employees were not notified of the existence of the oral agreements of 1935 and 1936. (Pages 7, 9, 14.)

b. The finding that "respondent's actions during the week preceding the shut down, . . . its publication of the notice of shut down, . . . the shut down itself . . . constituted interference, restraint, and coercion of respondent's employees in the exercise of their right of self-organization." (Page 14.)

c. The finding that "the notice sent out by the affiliates of the A. F. of L. . . . indubitably were part and parcel of a single plan devised and executed by the respondent and the A. F. of L. affiliates . . . to liquidate United activities. . . ." (Page 16.)

d. The so-called finding of fact that "the arrangement effected between respondent and the A. F. of L. af-

filiates on or about April 3, 1937, was an abandonment of the oral agreement of 1936 . . . and its replacement by a closed shop contract" which "was unquestionably illegal and void" and ". . . constituted interference, coercion and restraint of respondent's employees." (Page 18).

e. The so-called finding of fact that it is unnecessary to decide whether "the A. F. of L. affiliates represented a choice of representatives by a majority of respondent's employees" on April 3, 1937. (Page 18.)

f. The finding that certain employees were refused employment in order to discourage membership in the United and to encourage membership in the A. F. of L. affiliates.

2. Exception is taken to Section V of the Proposed "Findings of Fact" entitled "The Remedy," for the reason that it is based upon erroneous findings and for the further reason that it is arbitrary, unreasonable and contrary to law.

3. Exception is taken to Section VII of the Proposed "Findings of Fact" for the reason that it is arbitrary and contrary to law, since there is no question concerning representations existing at respondent's plants at the present time or heretofore.

4. Exception is taken to Section VIII of the Proposed "Findings of Fact" entitled "The Appropriate Unit," for the reason that the determination that production and maintenance employees, exclusive of clerical and supervisory employees, constitute a unit appropriate for the purposes of collective bargaining is arbitrary, unreasonable, contrary to the credible evidence in the case, and is an unreasonable denial to distinct and established groups of craft workers of their right to exercise their freedom of choice in the selection of a bargaining agent.

That exception is taken, in the alternative, to the refusal of the Board to permit additional evidence to be taken to establish the appropriate units for each of the craft groups in the event the Board is of the opin-

ion that the evidence heretofore adduced is insufficient to enable the Board to pass upon this question.

5. Exception is taken to paragraphs 2, 3, 4, 5, 6 and 7 of the Conclusions of Law on page 27, for the reason that they are erroneous, contrary to law, and based upon erroneous findings of fact, which findings are not supported by substantial evidence.

6. Exception is taken to the order on pages 27, et seq., for the reason that it is in excess of the Board's power since it is unsupported by proper findings and contrary to law.

Wherefore each of the intervening affiliates of the American Federation of Labor request that the National Labor Relations Board refuse to adopt the proposed findings of fact, etc., and respectfully request the opportunity to be heard in support of the exceptions herein taken.

Dated July 5, 1939.

International Molders Union of North America, Local No. 430,
Pattern Makers Association of Cleveland and Vicinity,
International Association of Machinists, District No. 54,
Metal Polishers International Union, Local No. 3,
Federal Labor Union No. 18,907,
By Jas. A. Padway,
Counsel.
321 Tower Building,
Washington, D. C.

NOTICE OF HEARING

(Docketed Aug. 2, 1939)

Please Take Notice that pursuant to authority vested in the National Labor Relations Board under an Act of Congress (49 Stat. 449) a hearing will be held before the National Labor Relations Board on Thursday, August 17, 1939, at 2:00 p. m., in Room 326, Shoreham Building, Fifteenth and H. Streets, N. W., Washington, D. C., for the purpose of oral argument in the above entitled matter. Argument will be limited to one-half hour for each party, and you are hereby advised that in view of the Board's docket no request for additional time made at the hearing, will be granted.

You may appear and be heard if you so desire.

Dated, Washington, D. C., August 2, 1939.

(Seal) Nathan Witt, Secretary.

APPEARANCES AT ORAL ARGUMENT

Room 442
Shoreham Building
Washington, D. C.

A hearing was held in the above matter for the purpose of Oral Argument at the above place on September 14, 1939, at 3:20 P. M.

Before:

J. Warren Madden, Chairman.
Edwin S. Smith, Member.
William M. Leiserson, Member.

Appearances:

Isadore Polier, of Counsel to the Board.

For the Company:

H. A. Spring, 156 Union Trust Bldg., Cleveland, Ohio.

For the Union:

James B. Carey, 1133 Broadway, New York, New York.

Intervenor:

Joseph Padway, 306 Tower Bldg., Washington, D. C.

File Brief of fact findings.

DECISION AND ORDER OF NATIONAL LABOR RELATIONS BOARD

Mr. Harry L. Lodish, for the Board.

Mr. L. C. Spieth and Mr. H. A. Spring, of Cleveland, Ohio, for the respondent.

Mr. James B. Carey, of New York City, and Mr. Sam. H. Griff, of Cleveland, Ohio, for the United.

Mr. Joseph A. [illegible]dway, of Washington, D. C., Mr. Edwin F. Woodle [illegible] Mr. Bernard Wachtel, of Cleveland, Ohio, for the A. F. of L. Affiliates.

Mr. John H. Orgill, of Cleveland, Ohio, for the Cleveland Federation of Labor.

Miss Margaret B. Bennett and Mr. Isadore Polier, of counsel to the Board.

DECISION AND ORDER

Statement of the Case

On April 22, 1937, United Electrical and Radio Workers of America, herein called the United, affiliated with the Committee for Industrial Organization,[1] herein called the C. I. O., filed with the Regional Director for the Eighth Region (Cleveland, Ohio) a petition alleging that a question affecting commerce had arisen concerning the representation of production and maintenance employees of Electric Vacuum Cleaner Company, Inc., Cleveland, Ohio, herein called the respondent, excluding clerical and supervisory employees, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On the same day, the United filed with the Regional Director charges alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of the Act.[2]

[1] Now the Congress of Industrial Organizations.

[2] As hereinafter more fully set forth, a labor organization was formed among the employees of the respondent between March 17 and 19, 1937, officers having been elected on the latter date, to which a charter as United Electrical & Radio Workers of America, Local 720 was granted by the United on or about April 1, 1937. The record discloses that the

Decision and Order of Nat'l Labor Relations Board

On May 6, 1937, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered an investigation and authorized the Regional Director to conduct it and to provide an appropriate hearing upon due notice. On May 11, 1937, the Board, acting pursuant to Article III, Section 10 (c) (2), of said Rules and Regulations, ordered a consolidation of the two cases for the purposes of hearing.

On May 21, 1937, the Board, by the Regional Director, issued its complaint against the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1), (3), and (5) and Section 2 (6) and (7) of the Act. A motion to make the complaint more definite and certain having been filed by the respondent, an amended complaint was filed on May 27, 1937. A copy of the complaint, accompanied by a notice of hearing on the consolidated cases, and a copy of the amended complaint, accompanied by an amended notice of hearing on the consolidated cases, were duly served upon the respondent and the United. Notice of hearing, and amended notice of hearing on the consolidated cases were duly served upon International Molders Union of North America, Local No. 430; Pattern Makers Association of Cleveland and Vicinity; Metal Polishers International Union, Local No. 3; International Association of Machinists, District No. 54; and Federal Labor Union No. 18907; herein jointly called the A. F. of L. Affiliates, all affiliated with the American Federation of Labor, herein called the A. F. of L. Thereafter notices of postponement of hearing on the consolidated cases were duly served upon the respondent, the United, and the A. F. of L. Affiliates.

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petition and charges signed by the United, were filed on behalf of United Electrical & Radio Workers of America, Local 720, and that all parties were so advised by the complaint, the amended complaint, the notices of hearing, and the proceedings had during the hearing upon the amended complaint and the petition. We shall refer to United Electrical & Radio Workers of America, Local 720, as the United except where a separate designation is necessary for clarity.

The complaint, as amended, charged in substance (1) that the respondent refused to bargain collectively with the United as the exclusive representative of the employees in an appropriate bargaining unit composed of all employees in the production and maintenance departments, exclusive of clerical and supervisory employees; (2) that the respondent in March 1937, and at various times thereafter interfered with, restrained, and coerced its employees in their right to self-organization, and particularly interfered with, restrained, and coerced its employees by threatening and acquiescing in threats to discharge employees who refused to join labor organizations chosen by the respondent, by uttering and publishing and permitting to be uttered and published statements, advertisements, and declarations of intentions to close its plant, by closing its plant on March 19, 1937, by refusing on April 5, 1937, to reinstate a large number of employees, by failing or refusing from and after April 5, 1937, to recall to employment 28 named employees because they had engaged in concerted activities for the purposes of collective bargaining and other mutual aid and protection; and (3) that the respondent had discriminated in regard to the hire and tenure of the aforesaid 28 employees for the reasons aforesaid and to discourage membership in the United.

On June 4, 1937, the respondent filed its answer, which admitted the interstate character of its business and the appropriateness of the unit for collective bargaining set forth in the complaint, but denied the alleged unfair labor practices and stated certain affirmative matter. By way of affirmative defense the respondent alleged (1) that on June 22, 1935, the respondent entered into a 1-year contract with the A. F. of L. Affiliates, which then represented a majority of its employees, recognizing said A. F. of L. Affiliates as exclusive representatives for collective bargaining, and as part of said contract notified its employees that attempted interference with said contract would result in discharge, that employees not then members of the A. F. of L. Affiliates would not be required to become members, but that in the future only members of the A. F. of L. Affiliates would be employed; (2) that on July 6, 1936, a contract,

substantially identical with the contract of June 22, 1935, was entered into between the respondent and the A. F. of L. Affiliates, which then also represented a majority of its employees, the contract to be effective as of June 24, 1936, and to run for a year; (3) that on March 20, 1937, the A. F. of L. Affiliates requested the respondent to close its plant temporarily and that it accordingly did so; (4) that the plant remained closed until April 5, 1937, when it was reopened pursuant to a notice published by the respondent and set forth in its answer; (5) that after negotiations between the respondent and the A. F. of L. Affiliates during the period April 5, 1937, to May 20, 1937, and after a majority of the respondent's employees had designated the A. F. of L. Affiliates as representative for collective bargaining and approved such contract, the respondent and the A. F. of L. Affiliates on May 20, 1937, entered into contract which included a closed-shop agreement.

Pursuant to notice of postponement a hearing on both the petition and the complaint was held in Cleveland, Ohio, on June 10, 11, 15, 16, 17 and 18, 1937, before William P. Ringer, the Trial Examiner duly designated by the Board. At the hearing the A. F. of L. Affiliates and the Cleveland Federation of Labor were permitted to intervene, both with respect to the hearing on the petition and with respect to the hearing on the complaint. The Board, the respondent, the United, the A. F. of L. Affiliates, and the Cleveland Federation of Labor were represented by counsel. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded to all the parties.

At the end of the case concerning the unfair labor practices, the respondent moved to dismiss the complaint, which motion was denied by the Trial Examiner. At the same time the Trial Examiner granted a motion by counsel for the Board to amend the complaint to conform to the proof with respect to variations not involving surprise or material changes. At the conclusion of the hearing the A. F. of L. Affiliates moved that the petition be dismissed, which motion was denied. These rulings by the Trial Examiner are hereby affirmed.

During the course of the hearing, the Trial Examiner made several other rulings on motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

After the close of the hearing briefs were filed by the respective counsel for the Board, the respondent, the A. F. of L. Affiliates and the Cleveland Federation of Labor. On November 1, 1937, both cases were transferred to and continued before the Board pursuant to Article III, Section 10 (c) and Article II, Section 37, of said Rules and Regulations. On July 7, 1938, the Board duly issued its Findings of Fact, Conclusions of Law, Order, and Direction of Election.[3] On July 16, 1938, the respondent filed exceptions to said Findings of Fact, Conclusions of Law, and Order. On August 4, 1938, the A. F. of L. Affiliates filed objections to said Findings of Fact, Conclusions of Law, Order, and Direction of Election, and moved that the same be amended. The Board duly considered said exceptions, objections and motions, and on August 23, 1938, overruled said exceptions and objections, and denied said motions.

On March 16, 1939, the Board, acting on its own motion, pursuant to Section 9 (c) and 10 (d) of the Act, and Article III, Sections 8 and 10 (c) (2) and Article II, Sections 37 and 38, of said Rules and Regulations, duly notified the A. F. of L. Affiliates, the Cleveland Federation of Labor, the respondent, and the United, that on April 6, 1939, or as soon thereafter as convenient, the Board, unless sufficient cause to the contrary should have appeared, would vacate and set aside its Findings of Fact, Conclusions of Law, Order, and Direction of Election, issued July 7, 1938, for the purpose of further proceedings before the Board. All parties were granted, but none exercised, the right to file objections and arguments, and to apply for oral argument. On April 11, 1939, the Board duly ordered the Findings of Fact, Conclusions of Law, Order, and Direction of Election vacated and set aside.

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[3] 8 N. L. R. B. 112.

On June 21, 1939, pursuant to Article II, Section 38 (c) and Article III, Sections 8 and 10 (c), of said Rules and Regulations, the Board issued an order directing that Proposed Findings of Fact, Proposed Conclusions of Law, a Proposed Order, and a Proposed Direction of Election be issued, and that the parties have the right, within 20 days from the receipt thereof, to file exceptions thereto, to request oral argument before the Board, and to request permission to file a brief with the Board. Copies of this Order, together with copies of the Proposed Findings of Fact, Proposed Conclusions of Law, Proposed Order, and Proposed Direction of Election, duly issued by the Board on June 21, 1939, were duly served upon the parties. Thereafter the respondent filed exceptions to the Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Order; and the A. F. of L. Affiliates filed exceptions to the Proposed Findings of Fact, Proposed Conclusions of Law, Proposed Order, and Proposed Direction of Election. The respondent and the A. F. of L. Affiliates requested oral argument before the Board in support of their exceptions.

Pursuant to notice served upon all parties, a hearing was held before the Board in Washington, D. C., on September 14, 1939, for the purpose of oral argument. The respondent, the United and the A. F. of L. Affiliates were represented at the hearing; all participated in the argument; and the Polishers Union, one of the A. F. of L. Affiliates, filed a brief, which we have considered.

The Board has considered the exceptions to the Proposed Findings of Fact, Proposed Conclusions of Law, Proposed Order, and Proposed Direction of Election, and the brief in support of the exceptions, and in so far as the exceptions are inconsistent with the Findings of Fact, Conclusions of Law, Order, and Direction of Election set forth below, finds no merit in them.

Upon the entire record in the consolidated cases, the Board makes the following:

FINDINGS OF FACT

I. The Business of the Respondent

Electric Vacuum Cleaner Company, Inc., a New York corporation, manufactures, sells, and distributes electric vacuum cleaners. It has its principal office and place of business at Cleveland, Ohio, and branches in about 100 cities in the United States and Canada, and its trade-mark is registered with the United States Patent Office for use in interstate commerce. Respondent controls Premier Vacuum Cleaner Co., Ltd., of Toronto, and in turn one-third of its own stock is held by General Electric Company.

About 75 per cent of the raw materials used by the respondent are obtained outside of the State of Ohio, and about 90 per cent of its finished products are shipped out of Ohio. In the year 1936 it produced over 200,000 units. In 1935 and 1936 respondent employed approximately 800 persons, excluding office workers and clerical and supervisory employees. According to the pay rolls, the number so employed had increased to approximately 900 by the first quarter of 1937, and by May 20, 1937, had further increased to approximately 1100.

II. The organizations involved

United Electrical and Radio Workers of America, Local 720, herein called the United, is a labor organization affiliated with the C. I. O., admitting to its membership all production and maintenance employees of the respondent, excluding clerical and supervisory employees.[4]

Metal Polishers, Buffers, Platers and Helpers, International Union, Local No. 3, herein called the Polishers Union, is a labor organization affiliated with the A. F. of L., admitting to its membership all metal polishers, buffers, and platers, and their helpers, employed by the respondent.

International Association of Machinists, District No. 54, herein called the Machinists Union, is a labor organization affiliated with the A. F. of L., admitting to its membership all machinists employed by the respondent.

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[4] See footnote 2, supra.

International Molders Union of North America, Local No. 430, herein called the Molders Union, is a labor organization affiliated with the A. F. of L., admitting to its membership all molders employed by the respondent.

Pattern Makers Association of Cleveland and Vicinity, herein called the Pattern Makers Association, is a labor organization affiliated with the A. F. of L., admitting to its membership all pattern makers employed by the respondent.

Federal Labor Union No. 18907, herein called the Federal Union, is a labor organization affiliated with the A. F. of L., admitting to its membership all production and maintenance employees of the respondent, except clerical and supervisory employees and employees who are eligible for membership in any of the above-mentioned unions affiliated with the A. F. of L.

III. The unfair labor practices

A. Interference, coercion, and restraint

(1) The respondent's labor relations prior to March 1937.

In 1934 the Machinists Union,[5] succeeded in signing up and obtaining partial payment of initiation fees by a considerable number of the respondent's employees. Organizational efforts were not pressed further. By March 1935 most of those who had enrolled had been dropped for nonpayment of dues, and few, if any, of the respondent's employees were members of the Machinists Union.

Meanwhile, in the first part of 1934, most of the polishers in respondent's employ were organized in the Polishers Union; and all of the polishers had joined by March, 1935, at which time a strike was called by the Mechanics Educational Society, another labor organization, hereinafter referred to as the M. E. S. A.

During 1934 a shop committee chosen by the polishers demanded and secured recognition of the Polishers Union by the respondent as representative for collective bargaining for the polishers. The committee also adjusted wages

[5] Apparently none of the other A. F. of L. Affiliates participated in this campaign.

and grievances concerning working conditions, but no agreement was entered into by the respondent.

There was no testimony that any contract was made between the respondent and the Polishers Union, providing for wages, hours, or working conditions for polishers, and such testimony as there was to the effect that a closed shop was agreed upon is unconvincing and, in part, inconsistent with the undisputed facts.

R. B. Wilson, executive vice president of the company, testified that prior to 1935 there was such a closed-shop contract "for years and years," but he did not know "for how many years back" it had existed, admitted it did not have "a beginning or ending time," and finally admitted there was no written agreement. Moreover, although Wilson testified that during this period, the people who were employed in the polishing department were employed through the Polishers Union, William Behrse, chairman of the polishers committee in 1934, and thereafter a member of the committee, testified without contradiction, that only a few of the polishers were members of the Polishers Union in 1932 and 1933; and W. E. Wilson, Leonard Trask, and Edward Wilson, polishers called as witnesses by the intervenors, testified that they had worked for the respondent from 1925, 1929, and 1933, respectively but had not joined the union until 1934.

Ray Muehlhoffer, business agent of the Polishers Union, contradicted Wilson by placing the earliest efforts at collective bargaining on behalf of the polishers as occurring in 1934. Muehlhoffer testified that in 1934, while he was an employee member of the polishers shop committee, the polishers "demanded collective bargaining rights" on the ground that it then represented a majority of the polishers. He limited himself, however, to the statement that, "It was agreed at that time that our organization would represent the Polishing Room." Muehlhoffer also testified that during negotiations in June 1935 between the A. F. of L. Affiliates and the respondent, "the organizations were asking for an entirely closed shop. I think the reason for asking that was that we had already established that condition." But by "condition" we understand only that

Muehlhoffer referred only to the fact that at the time all polishers were members of the Polishers Union, and did not purport to state that the respondent had made any agreement to that effect.

On the other hand Behrse, who was certainly in a position to know, categorically denied that the respondent made any closed-shop agreement with the Polishers Union.[6] He was corroborated by Arthur Kruse, another polisher and Howard Lowrance, a welder working in the polishing department, both employed by the respondent since 1929, and both of whom testified they had never heard of any closed-shop agreement.

We find that in March 1935 all polishers, though by no means all persons employed in the polishing department, were members of the Polishers Union; membership in other A. F. of L. Affiliates was limited to, at most, a few members of the Machinists Union; no collective agreements existed between the respondent and its employees or their representatives, though the Polishers Union had, for something less than a year, been recognized as the bargaining agent of the polishers.

Beginning about October 1934, M. E. S. A., had begun to organize the respondent's employees, except those employed as polishers. In March 1935 M. E. S. A., which meanwhile had enrolled some employees as members, called a strike to secure a wage increase.

The M. E. S. A. strike continued for about 10 weeks. Negotiations with the respondent developed into a series of deadlocks. Finally, a group of the strikers asked the A. F. of L. officials to negotiate as their representatives. The A. F. of L. officials declined on the ground that the Polishers Union was the only A. F. of L. organization in a position to represent any of the employees, but offered to undertake negotiations with the management if shown that a majority

[6] Behrse not only testified that there was no "agreement at all" respecting a closed shop but also denied that membership in the Polishers Union was a condition of employment, though new men were solicited by the committee. We conclude that the somewhat confused testimony of W. E. Wilson, a polisher, and John Fox, assistant foreman of the polishing department, as to a closed-shop contract related to the alleged agreement made between the respondent and the A. F. of L. Affiliates in June 1935 (see infra).

of the employees were willing to become members of the appropriate craft unions of the A. F. of L. and, in cases where there was no appropriate craft union, an A. F. of L. Federal Union.

The group which had appealed for aid shortly succeeded in signing up 176 strikers. The A. F. of L. officials declined to enter into negotiations on behalf of such a minority but, upon assurances that a majority could be obtained, held an organizational meeting in the A. F. of L. Metal Trades Hall, which a large number of the employees attended. A proposed contract was submitted to the meeting and after discussion it was voted to approve such an agreement and to return to work if the respondent would sign. The A. F. of L. officials then entered into negotiations with the respondent, stating that they represented a majority of the employees. The respondent insisted that, because of the claims made by M. E. S. A., the A. F. of L. Affiliates should produce proof that a majority of the employees had become members. This the A. F. of L. Affiliates were unable to do at that time, but the negotiations proceeded upon that promise that the proof would be forthcoming.

On June 22, 1935, immediately after membership cards for 608 of the then approximately 799 employees were presented to the respondent and checked, the respondent and the A. F. of L. Affiliates entered into a written contract for 1 year, which provided for seniority, an 8-hour day and a 40-hour week. The plant reopened on the following Monday and the employees returned to work.

In the course of the negotiations with the respondent, the A. F. of L. officials demanded a completely closed-shop agreement. The respondent took the position that it would not be fair to its employees, many of whom had been working there for years, to require them to join an organization, but made the counter proposal that all employees hired thereafter should be required after a work-probation period of 2 weeks to become members of the appropriate A. F. of L. union. The counter proposal was accepted but was not incorporated into the written agreement.

On July 6, 1936, the written agreement was renewed with one minor change in its provisions, to be effective as of June 24, 1936, and to run until June 23, 1937. The A. F. of L. Affiliates, who were again required to prove their majority, presented membership cards of 771 of the approximately 809 employees. Comparison of the July 1936 pay roll with the June 1935 pay roll shows the approximately 709 of those who had been employed June 22, 1935 (whom we will refer to as the old employees) were still employed, and that the other approximately 100 persons had been hired subsequent to June 22, 1935.

In negotiating the 1936 contract, the A. F. of L. Affiliates, whose membership now included all but approximately 38 of the respondent's employees, renewed their demand for a closed-shop contract but accepted instead an oral renewal of the previous agreement relating to new employees.

It is contended by the respondent that the oral agreements were not limited in their application to persons hired subsequently (whom we will refer to as the new employees). It is claimed that under the oral agreements, old employees who were members of the A. F. of L. Affiliates at the time they were entered into were required to remain members in good standing and that other old employees, though under no obligation to join the A. F. of L. Affiliates, were required upon becoming members to maintain such membership. It is further contended that the employees were notified of the terms of the oral agreements. We find none of these contentions sustained by the evidence. We are satisfied that the oral agreements related only to new employees,[7] and that the employees were never notified of their existence.

Muehlhoffer and Ralph Gordon, business agents of the Machinists Union, the only representatives of the A. F. of L. Affiliates who testified to the 1935 negotiations, merely stated that a demand was made for a completely closed-shop contract, that it was rejected, that a proposal was then

[7] We so stated in our Proposed Findings of Fact; the A. F. of L. Affiliates took no exception thereto and at the oral argument before the Board did not question the correctness of such a finding.

made that new employees be required to become members and that an agreement was reached upon the basis. Paulus, the respondent's superintendent, who stated that he was familiar with the June 1935 contract, testified that there was no requirement as to old employees, and, that the agreement simply was that "the new people coming in were to join the union."

On June 12, 1936, approximately a week before the expiration of the 1935 contract, the respondent's president, Julius Tuteur, wrote to the Director of the Board's Regional Office at Cleveland, with whom the respondent had had some conversations. The letter, after reciting that respondent was operating under the 1935 contract and that a copy thereof was in the Director's possession, added, apparently thereby disclosing for the first time to the Director the existence of any further agreement, "We further wish to advise you, in confidence, that we said at the time we signed the written agreement with those unions, orally, that each new employee would be required to become a member of the A. F. of L. unions within 2 weeks after date of employment."[8]

R. B. Wilson, who signed both the 1935 and 1936 contracts on behalf of the respondent testified with respect to the oral agreement that "from the time of our first entering into an agreement with the American Federation of Labor, it was understood with us that every employee, coming into our shop, would be required at the end of a 2-weeks' period to either join the Federation of Labor or leave."

Muehlhoffer, the only union representative who testified as to the negotiation of the 1936 contract,[9] stated that, "In

[8]The letter of June 12, 1936, was offered in evidence to corroborate the testimony that an oral agreement had been made. It, however, reinforces the conclusion we would have drawn independently from the evidence; that the oral agreement was by its terms limited to new employees; that non-incorporation of the oral agreement in written contracts was deliberate; and that employees were not notified of its existence.

[9]John Toth, business representative for the Machinists Union, testified that, when he began his duties in the latter part of 1936, Gordon merely informed him that there was an oral agreement that new employees were to become "members of the respective craft organizations."

1936, we again entered into an agreement that, as our relationship on a verbal basis had been satisfactory, we were willing to continue with the verbal agreement, or part of it, but it was insisted again that some of the employees in that plant must come into our organization." R. B. Wilson, however, testified that the oral agreement of 1935 was merely renewed in 1936 and that prior to 1937 the respondent did not know whether new employees had joined the A. F. of L. Affiliates.

That the oral agreements did not relate to old employees is further shown by the experience of Harold A. Keehl, one of the old employees who joined one of the A. F. of L. Affiliates in the early part of 1936. Later in the year, when he had fallen behind in his dues for 6 months, Keehl was called to the plant office where he was asked by R. W. Waterbury, respondent's accountant, why he had not paid his dues. Keehl answered that he was short of funds, and asked point-blank, "Do I have to belong to the Union as long as it is not a closed shop?" Waterbury, who though the respondent's accountant, actviely handled the respondent's labor relations along with R. B. Wilson and George R. Paulus, general superintendent, answered, "Well, I don't want to discuss that. We have an agreement and the only thing I can tell you, the best thing to do is to pay your dues."[10] Waterbury did not deny the conversation. Had there been any agreement that old employees remain members in good standing in the A. F. of L. Affiliates, it is reasonable to believe that Keehl would have been told of its existence on this occasion.

The respondent in its brief submitted after the hearing places considerable reliance upon the testimony of R. B. Wilson that it was announced on the reopening of the plant in 1935, and that employees were thereafter notified by a notice posted on the bulletin board, that they "would be considered as working against the interests of the company and as such subject to discharge" if they "did anything to disturb the peaceful and friendly relationship" between the respondent and the A. F. of L. Affiliates with whom it

[10] Waterbury and the shop steward arranged for Keehl to pay his arrears in instalments.

had just contracted. Irrespective of what the respondent might then or thereafter have deemed "to disturb the peaceable and friendly relationship,"[11] the caveat did not bring the old employees within the terms of the oral agreement. It did not even give notice to new employees of the existence of any agreement which required that they become members of the A. F. of L. Affiliates.

To establish that employees were notified of the oral agreement, 11 general employees were called as witnesses by the intervenors. Harry Denner, the only new employee among the 11, testified, however, that though he was hired about July 11, 1935, nothing was ever said to him about any requirement that he join a union, and he did not become a member of the A. F. of L. Affiliates until April 1937.

Matt Denmore who had been president of M. E. S. A. local, testified he "knew" when he joined Machinists Union in August 15, 1935, that "new" men "were supposed to be in the union." M. C. Parks, who had been an active member of the M. E. S. A. shop committee, and who also joined the Machinists Union in August 1935, merely testified that there was such a "general understanding in the shop." Leonard Trask, who testified that he had participated in the 1935 negotiations, discredited himself by testifying that it was a closed-shop agreement whereby "all the employees in the plant . . . were to be members" and that it was so understood among the employees, and he also contradicted other old employees by stating that there were "no discussions" of the agreement. The testimony of the other seven old employees was substantially the same; none of them indicated a source of knowledge other than general plant gossip and rumors; two of them, W. E. Wilson, a polisher, and John Fox, an assistant foreman in the polishing department, "heard" or "understood" that the oral agreement required all employees to be members of the A. F. of L. Affiliates, though W. E. Wilson later modified his testimony to give an equally imaginative version of the agreement; that it was a closed-shop contract as to polishers but required only new employees in other jobs to become members of the A. F. of L. Affiliates.

[11] Cf. Section III A (2), infra.

Notice to employees of the terms of the oral agreement was sought also to be shown by the testimony of R. B. Wilson, Paulus, and Gordon.

Wilson testified that each foreman did his own hiring and advised new employees at the time of employment that they "would have to join the American Federation of Labor within 2 weeks or would be discharged." Paulus testified that in 1935 he instructed each foreman "to tell every man when he employed him, that he was required to join the Union within 3 weeks from the time he started" and that he checked up on his foremen "at almost regular intervals, asking if they had followed those instructions." Gordon testified that in 1935 it was "the understanding that foremen would so advise new employees." In 1937 Gordon again took charge of the affairs of the Machinists Union at the respondent's plant. According to him, he did so in order to bring to the respondent's attention the failure of recently hired employees to become members of the Machinists Union; secured permission for one representative of the Machinists Union to talk to the men in the plant; and had Toth, another business representative of the Machinists Union, go through the plant with the shop committee for that purpose. Gordon testified that on this occasion the new men "doubted the custom" and "were called into the respondent's office with all the employees so there could be a verification of the established precedent,"[12] and that, when the new employees nevertheless denied knowledge of the oral agreement, they were contradicted by the foremen.

We are satisfied, from the evidence introduced by the respondent and intervenors themselves, that prior to 1937 new employees were not notified of the oral agreement. The testimony that the foreman notified the new men of the agreement, or that they were instructed to do so cannot be reconciled with the fact that, as late as June 12, 1936, the respondent expressly stated in a letter that it wished the

[12] According to Gordon's testimony "the established precedent" to be thus verified was "the understanding that *all* employees had to join the Union." This, of course, is at variance with the contention that at these conferences in the respondent's office only new employees were asked to become members of the A. F. of L. Affiliates. See Section III A (2) infra.

existence of the agreement to be kept secret. We are unable to accept Gordon's explanation of his version of why the new employees were called to the office or what then transpired. He testified that "the agreement was explained to them and invariably the fellows would say: 'Well, we are sorry we didn't know anything about it' "—yet when he was asked whether he was present, Gordon answered "I believe I was, yes." We also are unable to believe his statement that although the foreman had advised new employees, when they were hired, that the respondent had an agreement with the A. F. of L. Affiliates which required them to become members within 2 weeks, that although such notice was repeated by the business representative of the Machinists Union in the presence of a shop committee, workers remained so incredulous that it was necessary that there be a further "verification of the established custom," by confrontation by other employees and by foremen.

Finally, if the new employees had been notified of the oral agreement, it is not unreasonable to expect that some of them would have been called as witnesses[13] or that the foreman alleged to have notified them would have been called. Neither were called, although five new employees[14] called as witnesses by the Board had testified that they had not been given notice of the agreement.

(2) Interference, coercion, and restraint in March, April and May, 1937.

In March, 1937, employees working in the machine shop were called into the respondent's office where they were spoken to by Juluis Tuteur, R. B. Wilson, Paulus, Waterbury, and the officials of the A. F. of L.

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[13]The pay rolls in evidence show at as late as May 20, 1937, of the approximately 1100 persons then employed by the respondent, approximately 519 were new employes, and that of the 519, approximately 58 had been hired during the term of 1935 contract, and approximately another 186 had been hired before the events of March 1937 which resulted in the shutting down of the plant. R. B. Wilson testified that the number employed May 20, 1937, in non-supervisory and non-clerical jobs was approximately 1032.

[14]Two of the five, James Mitchell and Rudolph Rummel, were still employed by the respondent.

We have referred to Gordon's testimony that new and old employees were called into the office so that the new employes who denied knowledge of the oral agreement might be confronted by their foremen, and so that the agreement might be "explained" to all employees. Toth who according to Gordon rounded up the employees, did not mention the alleged confrontations; nor for that matter did anyone else. Toth testified that, on these occasions, Paulus merely told the employees that the company had an agreement whereby the new employees were required to join the Machinists Union but explained that old employees need not. Moreover Toth admitted that he did not know whether the men to whom Paulus spoke were new or old employees, and that on one occasion, when seven men were called in nothing was stated at the conference to indicate that there was a difference between old and new employees.

Waterbury testified that old employees were summoned to the office "to be sure they understood exactly our contract." Like Toth, he ventured no explanation as to why this was thought necessary or desirable, was uncertain whether any new employees were called in, and professed to be unable to remember whether any of the employees signed union cards in the office.

Paulus testified that the groups called in were from the machine shop, and that they "were old men who had been there a long time, men I felt I knew very well." He stated that they were called in because the officials of the Machinists Union had asked for his "assistance" in signing up new employees. According to Paulus, he, Waterbury and Toth explained the contract to the old employees and asked them to aid in getting the new employees to join the Machinists Union. Paulus did not testify that any new employees were called to the office, admitted that on one visit to the office five of the employees signed cards, and also admitted that Edward Ramsey, an old employee, was discharged when he refused to sign. On that occasion, Paulus testified, there were present with him not only Toth and Gordon, business agents of the Machinists Union, but also Muehlhoffer, business agent of the Polishers Union,

and Lenahan, Secretary of the Cleveland Federation of Labor, and that it was Lenahan who asked that Ramsey be discharged.

R. B. Wilson, who also admitted that Ramsey was discharged because of his refusal to join the Machinists Union,[15] recalled that McKinnon, general organizer for the A. F. of L., was also present at the time. Wilson did not purport to explain why the men were called to the office, except to say that he warned them that "any employee of ours who did anything to disturb the friendly relationship existing between our company and the American Federation of Labor would be considered as operating against the best interests and subject to dismissal." What this warning was intended to mean to employees and what it undoubtedly conveyed to them is to be gathered from a consideration of what was happening in the machine shop meanwhile.

Wilson admitted that about this time[16] Muehlhoffer, business agent of the Polishers Union, and Newman and Rhinehart, members of the polishers committee, advised him "there was some agitation in the machine shop," that he told them that they were "unduly alarmed" and that "we would proceed to investigate the matter." Calling the employees to the office was obviously Wilson's idea of an investigation. And the import of the conferences that followed is evident when it is noted that "the agitation in the machine shop" was by then an organized movement among the employees to sign up members for United. Although allegedly about a hundred new employees had been hired in the machine shop since July, 1936, and not joined the A. F. of L. Affiliates, that obviously was not the cause of occurrences of March, 1937. Indeed, Gordon's testimony that the Machinists Union sought out the management at this time to obtain permission to solicit new members at their work was transparently untrue in view of the fact that the A. F. of L. Affiliates had had that privilege since 1935.

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[15]The circumstances with respect to Ramsey's discharge are more fully considered below.

[16]Wilson fixed the occasion as "On the morning of Thursday, March 18th, I believe was the date . . ." See infra.

What was at issue was the possible defection of all employees to United. Otherwise, for example, there is no way to account for the admitted presence of Muehlhoffer, business agent of the Polishers Union, Lenahan, Secretary of the Cleveland Federation of Labor, and McKinnon, general organizer of the A. F. of L., in the office when employees from the machine shop, were called in, and Lenahan's admitted role on those occasions.

This fear of United first manifested itself in the treatment of Edward Rericha, several days before the first group of employees were called to the office. Rericha, a member of the Polishers Union, had been employed by the respondent as a polisher for 11 years. On several occasions prior to March 11, he discussed the C. I. O. with other men in the plant and suggested that if they "would all belong together" (obviously referring to their belonging to one union rather than the several A. F. of L. organizations), "we would get better results." When Rericha came to work on March 11, he found his time card withdrawn and when he asked the reason was referred to Rhinehart, of the polishers committee, who sent him to Muehlhoffer. When he went to the union's office he was accused of talking against the union and of being a member of the C. I. O. for the past 2 months. It appears that he was formally tried for delinquency in dues but, because of the protests of his fellow polishers, those charges, too, were dropped and he was told to return to work March 22.[17]

About March 15 Theodore Vitosky, employed in the machine shop, objected to Toth's efforts to sign up a new employee who had not been promised a steady job, remarking, "It looks like a racket." Toth answered he "didn't have to take that" and obtained Vitosky's name from the timekeeper. The next day Vitosky and four other employees were sent to the office by Sam Wagner, general foreman of the machine shop. Of the five employees, Vitosky and at least one other, Elmer Lejinsky, were old employees.[18] In the office they found Paulus, Waterbury,

[17] Rericha was admittedly late in his dues but had arranged with the secretary of the Union to make payment on pay day, March 12.

[18] Vitosky could not identify by name two of the men who went with him to the office. One, whom he called "Peter Jacobs," does not appear

Toth and some other persons whom Vitosky did not recognize. Before they left the office, Vitosky and his companions had all signed union cards. As we have pointed out the respondent offered no explanation for this. We accept Vitosky's testimony that they signed because Paulus asked them to and refused to allow them time to consider the matter.

On March 16 Paulus was seen in the machine shop, stopping at machine after machine, and signalling the representatives of the Machinists Union to come over. When Edward Koutnik, employed in that department, came to work at 11 o'clock that morning, several hours after the shift began, he found the shop in confusion and was approached by a number of employees who told him that the "A. F. of L. organizers are down here and they are trying to make everybody sign up." Later in the day, Koutnik and Howard Lowrance, a welder in the polishing department who was a member of the United, agreed that Lowrance would arrange for a meeting with a representative of United and Koutnik would pass around word of the meeting. The next afternoon, after work, Scott, a United organizer met with about 60 employees. They signed cards and received others which they took into the plant the next morning and began to sign up other employees.

On the morning of March 17, Clyde H. Boyes, a subforeman, and himself an old employee, was sent to the office, together with six old employees in the automatic department of the machine shop.[19] Boyes testified that McKinnon (general organizer for the A. F. of L.) and Toth, in the presence of Paulus, Julius, Julius Tuteur and four or five others whom he did not recognize tried to get them to sign cards but that after a dispute over initiation fees

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under that designation on the pay roll. The pay rolls, however, do show an "Elmer Ledinsky" (and no one else with a similar name) who must be "Lejinsky," and show him as still in the Machine shop as late as May 20, 1937.

[19]Boyes named as his companions, Patrick Barrett, Ed Cauley, Jim Crenie, Ross Green, Andy Hegedus and Louis Young. The pay rolls show all of them were old employees in the machine shop. "Cranie" appears as "Cromie," Ross Green sometimes appears as "Ross Greene" or "C. R. Greene" (though with the same check number) on the pay rolls. All were still employed as late as May 20, 1937.

they returned to work without signing. About 2 o'clock that afternoon Boyes and some of the automatic men were recalled to the office. This time, Paulus said he thought they were intelligent men who would want to hold their jobs and could use their influence on the other employees. Boyes testified that Waterbury then told them "they wanted an answer soon" because the Polishers Union had threatened to strike if the employees in the machine shop did not sign up, and added that this would result in their being "out on the street." Waterbury denied making such a statement but neither he nor anyone else denied that this was the second time in one day that these employees had been called to the office. Nor was there any denial of Boyes' testimony that he and some of the same men were called in again on March 18. No one can believe that they were summoned the second and third time for the purpose of being informed as to the existence of the oral agreement. We find Boyes' testimony as to this and the previous visits convincing. On the third occasion Paulus, Wilson, Waterbury, Lenahan, McKinnon and several others were present. Lenahan asked the automatic men to sign a card and when they walked out again without complying Lenahan told Wilson "they should be discharged."

Waterbury's warning on the afternoon of March 17 of a strike by the Polishers Union followed only a few hours after Muehlhoffer had proposed a strike to the polishers committee because the men in the machine shop were "joining C. I. O." Behrse, one of the committee, testified that when no decision was reached Muehlhoffer took Rhinehart, the other two members of the committee, to the office; that on their return Newman, who was chairman of the committee, reported that they had proposed a strike to Wilson, but that the latter had said "it was not necessary, that it was nothing serious about it, but he was going to make them join the American Federation of Labor Union, and if they don't he would fire one or two so the rest of them will join." Though hearsay, this testimony as to the threat being made to Wilson is satisfactorily corroborated by Boyes' testimony as to Waterbury's warn-

ing. Wilson, we have noted, admitted the visit by Muehlhoffer and the committee. He denied, however, that a strike was threatened or that he had made the statement imputed to him. His denial is not persuasive. He admitted warning those called to the office that if they "did anything to disturb the friendly relationship" with the A. F. of L. Affiliates they "would be subject to dismissal," he gave no explanation of why, after the visit by Muehlhoffer and the committee, Boyes and the other automatic men were twice recalled to the office, and he admitted that on March 18 Ramsey was discharged for refusing to sign a card in the office.

Edward Ramsey, together with "Vargo" or "'Lefty' Fargo," Kiss and "a fellow from the Automatic room" (who seems to have been Louis Young) were sent to the office by Sam Wagner, the general foreman, about 2 o'clock in the afternoon of March 18. Ramsey, Vargo and Kiss were old employees (as was Young).[20] In the office Lenahan acted as spokesman for a group which included Waterbury, Toth, Paulus, Gordon and Muehlhoffer. Ramsey testified that Lenahan said the A. F. of L. "had a contract with the firm and the boys would have to sign up,"[21] that all but Ramsey signed and returned to work; that Ramsey persisted in refusing to sign; that Lenahan then told him he was fired, whereupon, Ramsey went back to the machine shop. No one denied Ramsey's testimony as to what happened to him personally; on the contrary, both Wilson and Paulus admitted that this was what happened. Nor was there any direct denial made of Ramsey's testimony so far as it related to Vargo, Kiss, and the "fellow from the automatic room." We see no reason to doubt that portion of Ramsey's testimony and find the facts to be as stated by him. We are further impressed by the failure of the respondent or intervenor to call as a witness, as to

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[20] We have already referred to Louis Young. See footnote 16, supra. the pay rolls show only one "Vargo" (and no "Fargo" in the machine shop). The "Vargo," "Frank Vargo" was an old employee. The pay rolls also show only one "Kiss," "Gus Kiss," and show he was an old employee. Both Vargo and Kiss were still employed as late as May 20, 1937.

[21] Cf. footnote 12, supra.

what happened in the office, a single fellow employee named by Vitosky, Boyes and Ramsey, or for that matter, any other employee, old or new.

As we have pointed out Ramsey was told in the respondent's office by Lenahan in the presence of Paulus, the respondent's superintendent, that he was fired." Lenahan also ordered him to "step out into the other room." This Ramsey did, waited a few minutes in the next room watching the other men sign up, and then returned to his department. Under the circumstances, the silence of Paulus, who was in charge of hiring and discharge, was reasonably regarded by Ramsey as indicating that Lenahan acted with the acquiescence and approval of the respondent. Nor may the incident be brushed aside, as suggested by the A. F. of L. Affiliates at the oral argument before the Board, on the ground that while Lenahan "had no right" to tell Ramsey that he was discharged, Lenahan "was pulling a legitimate bluff." The record leaves no doubt that Lenahans purported exercise of authority on behalf of the respondent was coercive because it was understood by Ramsey to be, and the respondent knew it would be understood to be, the action of the respondent. Moreover, it is unnecessary to determine whether under principles of agency Ramsey's discharge was effected instanter upon Lenahan's declaration. The contention of the respondent that "it fairly appears that no one was discharged," is not, in any event, supported by the record. Paulus admitted that he sent for Wagner, Ramsey's foreman and told him that Ramsey "was fired." Further, Wilson flatly testified that Ramsey was discharged by his foreman as the result of the request of the A. F. of L.

The further contention is made that the respondent, shortly after he left the office, realized that Ramsey was an old employee and should not, therefore, have been discharged; that Paulus at once sent for Ramsey to notify him that he had not been discharged; but that Ramsey "refused to return to the office to be given this word." Meanwhile, the men in the machine shop on hearing of Ramsey's discharge sat down, Ramsey joining in the sitdown. According to the respondent Ramsey's refusal to

return to the office is to be explained on the ground he was "excited and (not) interested enough to return to the office," and that the men in the machine shop persisted in the sit-down after Paulus had told them to go home and return in the morning, simply because they "had made up their minds to sit and this they proceeded to do arbitrarily, without justification and in violation of their agreement." The A. F. of L. Affiliates advance another explanation for Ramsey's refusal to return to the office, it being their contention that the strike had no relation to Ramsey's discharge, but was a deliberate step in the organizational campaign of the United. At the oral argument, the respondent and the A. F. of L. Affiliates, for the first time, advanced the further contention that the strikers committed acts of violence and wantonly destroyed the respondent's property. The respondent and the A. F. of L. Affiliates rely upon the facts thus asserted to explain and justify the conduct of the respondent following the termination of the sit-down on March 19. Further, the claim that the discharge of Ramsey was the result of an error, and was sought to be corrected immediately, is urged to support the contention that the respondent had engaged in no unfair labor practices prior to the strike. We shall review the course of events immediately preceding the strike, and then consider the further contentions with respect to the cause of the strike and its conduct.

The claim with respect to Ramsey's discharge is stated as follows in the brief submitted by the respondent to the Trial Examiner after the hearing:[22]

> There is no testimony as to what occurred immediately after Ramsey left the meeting with Lenahan. There must have been some discussion, for Paulus then realized that Ramsey, being an old employee, should not be discharged for failure to join the union, and so

[22]The position of the A. F. of L. Affiliates was stated as follows at the oral argument before the Board: "It turned out that Ramsey was an old employee—preceding when the agreement of 1935 was made. That was discovered almost instantly, and a messenger was then sent to tell him that don't apply to you; and he says 'I won't come.'"

Paulus testified (p. 695), and Ramsey testified, Paulus sent for Ramsey to notify him that he had not been discharged, but Ramsey refused to return to the office to be given this word and in the meantime the sit-down had started.

The claim that Paulus or Ramsey so testified completely misstates the record. Paulus' testimony as to the events following Ramsey's departure from the office is as follows:

Q. Was there anything said at that meeting about Ramsey being discharged?

A. Yes, sir.

Q. Who said that and what happened?

A. Mr. Lenahan requested that we discharge that man.

Q. What was done about Lenahan's request?

A. I sent for the foreman of the Tool Room or the foreman of the Machine Shop and told him that he should discharge that man.

Q. Now, about what time was that?

A. I would say two o'clock in the afternoon.

Q. Now, after, as you say, Ramsey had been notified of his discharge, what if anything did you do?

A. I notified the foreman of the Machine Shop, and that is all I did do at the time.

Q. After that, what was done?

A. After that, the foreman of the Machine Shop came in and told me that the men were sitting down in the Machine Shop.

Q. Did you send for Ramsey at that time?

A. We sent for Ramsey then and called him back again and he refused to come in.

Q. What was the purpose in calling Ramsey back?

A. We wanted to tell Mr. Ramsey that we did not want to discharge him, we reconsidered it.

Q. And he refused to return?

A. Sir?

Q. He refused to return?

A. Yes, sir.

Q. Did you go down to the shop after you learne of the sit-down?

A. Yes; I went into the factory. It was abou three o'clock or three-thirty that I went into the fac tory.

Q. Did you say anything to the men at that time

A. They were standing around in different groups and I patted them on the back and told the men tha I thought they should go home and come back to wor in the morning.

Q. What did you say at that time about anybod having been discharged?

A. I didn't say anything.

Q. Did you make the statement to any of the me that Cawley[23] had not been discharged?

A. No; I mentioned no names about anybody be ing discharged. I mentioned no names.

Q. There has been some testimony here that a that time you made the statement in effect: "Forge about any discharge and go home and come back t work in the morning;" do you remember making tha statement?[24]

A. I didn't make that statement. The only thing said was that they should go home and come back i the morning. I didn't say anything about any dis charge.[25]

Ramsey testified that he was given no reason for the re quest to return to the office and that no one thereafter tol him that he was not discharged, and we find that the facts are as stated by him.

It is to be noted that Paulus did not testify that he de cided to recall Ramsey to the office because it had been dis covered that Ramsey was an old employee and, therefore

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[23]Obviously a typographical error; the reference is plainly to Ram sey.

[24]The reference is to the testimony of Koutnik, who was clearly i error.

[25]The testimony quoted appears at pp. 595-597 of the record. Sub sequently Paulus admitted that after Ramsey had left the office, he Paulus, notified Wagner that Ramsey "was fired."

not properly discharged. Moreover, Paulus did not testify that he instructed Wagner to advise Ramsey that the reason for his recall to the office was to withdraw the discharge. Indeed, it is apparent that Paulus' testimony that it had been decided to withdraw the discharge is not to be credited in view of his admission that, during his subsequent visit to the machine shop, he made no statement either to Ramsey or the other strikers that the discharge had been reconsidered.

The record clearly discloses that Ramsey's discharge was not the result of any mistake. Not only is there no evidence that it was, but it affirmatively appears that it was not. Ramsey was not an employee on the border-line between old and new employees. We had been in the respondent's employ for over 7 years. It is inconceivable that Paulus and Waterbury thought he was a new employee. Moreover, it clearly appears from Paulus' testimony that he was under no misapprehension. He admitted that the men called in from the machine shop "were old men who had been there a long time, men I knew very well." Furthermore, Vitosky, who on March 16 had been compelled to sign a card in the presence of Paulus and Waterbury, had been in the respondent's employ for almost 9 years; and Boyes, a sub-foreman who three times on March 17 and 18 had been solicited in the presence of Paulus and Waterbury to sign a card, and on the last occasion, shortly before Ramsey's discharge, had been threatened by Lenahan with discharge, had been in the respondent's employ for 12 years. It is patent that Ramsey was not recalled because of any discovery that he was an old employee but because his discharge had been immediately followed by a strike.

The record is clear, and we find, that beginning on March 16, the respondent set out to forestall the organization of its employees by the United, and to compel them to sign up in the A. F. of L. Affiliates. As we have pointed out above, prior to March 1936 employees were not advised of the existence of the oral agreement. The record fails to show the name of a single new employee among the persons called into the office on March 16, 17 and 18, and the

circumstances set forth above lead us to conclude that the new employees were not called in, and quite understandably so. The concern of the respondent was not over the failure of some new employees to join the A. F. of L. Affiliates, but with the possibility of dissatisfaction by the approximately 630 old employees who constituted more than two-thirds of the 932 persons on the pay roll, and none of whom were covered by the oral agreement and whose affiliation with the United would not only constitute that organization the representative of a majority of the the employees but obviously would have swung, or at least been most likely to turn, the new employees to the United. Faced with this situation the respondent summoned the old employees to the office and there sought to, and in many instances was able to, coerce them into joining the A. F. of L. Affiliates. Its action was plainly an interference with the right guaranteed its employees by Section 7 of the Act.

Only by virtue of the proviso contained in Section 8 (3) of the Act[26] was the respondent entitled prior to March 1937, to require new employees to join the A. F. of L. Affiliates. That right it then had because of the provisions of the agreement made in 1935, and renewed in 1936, when the A. F. of L. Affiliates represented a majority of the employees and had not been assisted by any unfair labor practice by respondent. However, the rights of old employees guaranteed by Section 7 of the Act were unaffected by the agreement. The agreement placed no limitation upon their right to become members of the United and to encourage other old employees to become members, or to decline to join, or to drop their membership in the A. F. of L. Affiliates, or to persuade other old employees to do so. For did the agreement inhibit old employees from urigng such action upon new employees. Of course new employees who

[26]The proviso clause of Section 8 (3) reads: "Provided, That nothing in this Act . . . . shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in Section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made."

forsook or refused to join the A. F. of L. Affiliates after being advised of the oral agreement could be discharged pursuant thereto. But it does not follow that the respondent was entitled to interfere with the efforts of old employees to induce new employees to join the United or to change their affiliation from the A. F. of L. Affiliates. The agreement did not purport to give the respondent any such right.[27] Moreover, the proviso does not permit imposition of the penalty in a case where no notice has been given of the existence of the agreement. The proviso in permitting the employer "to require membership" in a labor organization manifestly implies that the employee shall be advised that the employer's action is taken pursuant to an agreement. Otherwise employees would have no means of knowing whether they were being illegally discriminated against, or whether the employer was simply enforcing a valid obligation. The proviso was hardly intended to permit equivocal employer conduct, so likely to precipitate industrial conflict over what employees, in view of the employer's silence, quite reasonably conclude was an interference with rights guaranteed to them by Section 7 of the Act.

The respondent's conduct, manifestly illegal on March 16, 1937, did not become permissible action on March 17, because the A. F. of L. Affiliates threatened to strike unless the employees in the machine shop joined those organizations; the threat afforded no justification for the continuance of the flagrant interference with the rights of employees.[28]

We have referred above to the contention of the respondent that the employees in the machine shop went on strike "arbitrarily" and "without justification" and to the contention of the A. F. of L. Affiliates that the strike was part of the plan of the United to organize the plant. The

[27] Whether an agreement purporting to give the employer such a right would be invalid under the Act, we find it unnecessary to decide in the instant case.

[28] Cf. Matter of Star Publishing Company and Seattle Newspaper Guild, Local No. 82, 4 N. L. R. B. 498, enforced in National Labor Relations Board v. Star Publishing Company, 97 F. (2d) 465 (C. C. A. 9th, 1938).

record, however, shows that the strike was the direct result of the respondent's illegal action, that it was decided upon only after the threat by Lenahan on March 18 to Boyes and the other automatic men that they "should be discharged" for refusing to join the A. F. of L. Affiliates, and that it was finally precipitated by the discharge of Ramsey. The record further establishes that the strike was a defensive measure and not an organizational tactic; that it was terminated at once upon the respondent agreeing that the illegal conduct of the past few days would cease. Finally, the record leaves no doubt that such violence and destruction of property as occurred, and there was little of either, is to be attributed to the A. F. of L. Affiliates.

As we have pointed out above, a group of approximately 60 employees met with Scott, the United organizer, on the afternoon of March 17, signed cards, and received others to be used in soliciting members. There was no discussion of a strike, and the strike the next day was a complete surprise to Scott. The calling of a strike was first discussed by the men in the machine shop after Boyes and the other automatic men reported the threat made by Lenahan in the presence of Paulus and Waterbury. When Ramsey and his group were called to the office the men in the machine shop agreed that they would strike if any discharges followed. The record is unclear only as to whether the strike followed immediately after Ramsey returned from the office or whether confirmation of the discharge through Wagner intervened. That the strike was caused by Ramsey's discharge is plain, and the contention to the contrary is in the teeth of Wilson's admission that the respondent knew it to be the cause. Wilson testified that "The reason was that an employee [later identified by him as Ramsey] had been discharged at quitting time, a few minutes before, and as a demonstration about that the employees you have referred to [i. e. the employees in the machine shop] stayed overnight."[29]

The strike by the employees in the machine shop was

[29] Later in his examination Wilson was asked whether "as a result" of Ramsey's discharge "the employees protested by a sit-down." His answer was "Yes."

not conducted as an organizational strike. No attempt was made to prevent the operation of the other departments. While employees in some of the other departments on hearing of the strike quit work, the shift ended shortly after the strike began, and employees in the other departments left the plant; the men on the next shift worked except in the machine shop. During the evening some of the strikers asked employees in the plating department to join in the strike. This led to a heated argument with Muehlhoffer, business agent of the Polishers Union, which included employees in the plating department, and Rhinehart, a member of the polishers committee. When the matter came to the attention of Koutnik, one of the leaders of the strike, Koutnik took the position that since the employees in the plating department were represented by the Polishers Union, and had been ordered to work by their representatives, the strikers should not seek to involve them in the strike; and the solicitation ceased at once. The Strike remained limited to the machine shop, the employees in which were the persons who had been subjected to the respondent's illegal action. Indeed, there is no evidence that any employee in the machine shop wished to work but was prevented from doing so by the strike, although the pay rolls in evidence show that many of them were still employed by the respondent at the time of the hearing and therefore available as witnesses.

The strike by the employees in the machine shop was clearly a defensive step, and the claim of the respondent that the men struck "arbitrarily, without justification and in violation of their agreement" is manifestly without merit. The action of the respondent which caused the strike was illegal, and was, moreover, action approved, and there can be little doubt, instigated by the A. F. of L. Affiliates. The claim now made that the employees in the machine shop had available and should have resorted to the procedure provided in the contract for settlement of grievances by negotiations between the respondent and the A. F. of L. Affiliates flouts common sense.[30]

[30] Cf. In the Matter of Kelley's Creek Colliery Co. and International Union, Progressive Mine Workers of America, 17 N. L. R. B., No. 42.

Whether the strike constituted a trespass upon the respondent's property it is unnecessary to decide, although we note that the respondent at no time ordered the men to leave the plant. None of the strikers were denied reemployment by the respondent because of their participation in the strike.[31] Nor, as we shall point out, are the respondent's actions subsequent to the termination of the strike to be attributed thereto. Apparently in an attempt to establish such a causal connection between the strike and the respondent's actions after its termination, the respondent and the A. F. of L. Affiliates urged at the oral argument before the Board that the strike was violently conducted and involved the wanton destruction of property by the United. The contention has, as we have stated, no foundation in the record. Neither the respondent nor the A. F. of L. Affiliates called any witnesses to establish such acts on the part of the strikers, nor sought to elicit such evidence by cross-examination of the witnesses called by the Board. From the uncontradicted testimony it appears that the only violence occurred on the morning of March 19; that at that time McKinnon, general organizer of the A. F. of L., came into the machine shop and ordered the strikers to leave; that McKinnon immediately attempted to bring in 30 or 40 men, who obviously were not employees in the shop since the employees were already there on strike; that one of the 30 or 40 men sought smashed through the glass door with a blackjack, hardly an instrument carried by an employee; that the strikers prevented these men from entering the room; and that then the strikers were showered with bricks and other objects "from outside the factory." There is no evidence that McKinnon acted under any authority from the respondent, or that he made any such representation to the strikers. Such violence and property damage as occurred was, therefore, plainly attributable to the A. F. of L. Affiliates. Indeed there is no evidence that the respondent, which had never ordered the men from the plant, deemed it necessary to invoke the protection of the police.

[31] Indeed Ramsey, who joined in the strike and remained in the plant until it was terminated, was among these reemployed. See footnote 42, infra.

On the contrary the appeal to the police was made on behalf of the strikers.

On the morning of March 19, Scott, who had learned of the strike, went to the East Cleveland police station to invoke the assistance of Chief of Police Corlett. The latter had acted as an intermediary in 1935, and the first contract between the respondent and the A. F. of L. Affiliates had been signed in his office. Scott appealed to Corlett to intervene in the situation and attempt to make "some kind of arrangement to get the men back who were discharged[32] and a peaceful settlement." Corlett agreed to undertake a settlement, and later in the day advised Scott that he had communicated with the respondent, and suggested that Scott prepare an agreement which he would present to the respondent. An agreement was prepared, but Corlett returned and informed Scott that his proposal was not acceptable to the respondent. Scott then prepared the following proposal:

> I hereby authorize Chief of Police Corlett to act with the Electric Vacuum Company. We agree to go back to work with the reinstating of the two men discharged yesterday,[33] with the understanding that the employees shall have the right to join any Union of their own free will.
>
> Under these terms we agree to go back to work peacefully.
>
> Walter E. Scott,
> District Organizer.

Corlett returned to the plant with the revised proposal, telephoned Scott who had remained at the police station, and informed him that both Wilson and Lenahan had agreed thereto, but that the men in the machine shop insisted upon proof that Scott had authorized the settlement.

[32] Scott had apparently been erroneously informed that two employees were discharged. This accounts for his reference to "these men . . . that were discharged." Not even the respondent was clear as to how many had been discharged.

[33] See footnote 32, supra.

At Corlett's suggestion, Scott came to the plant, and in the presence of Corlett and Paulus addressed the strikers, and explained that under the settlement they would return to work on Monday, which was the next workday. Scott made his statement about 2 o'clock in the afternoon, and the strikers immediately left the plant. Although the respondent urges that there is no "competent or substantial evidence to support a finding" that the respondent was a party to the settlement of the strike, or that it was adjusted with the understanding that "the employees shall have the right to join any Union of their own free will," Wilson testified as follows:

> Chief Corlett came to us from Mr. Scott and stated that if we would agree to take back two employees who had been discharged—one only had been discharged, but there were two mentioned in this particular transaction, who the second one was I don't know—if those people would be taken back without discrimination, the plant would open up, and we said that we have no objection, to refer the matter to the American Federation of Labor, who stated that they had no objection, and on that agreement the plant was evacuated.

It is apparent from Wilson's testimony that the respondent was a party to the settlement agreement, as were the A. F. of L. Affiliates. There is no suggestion in Wilson's testimony that the settlement was upon any other basis than that proposed by Scott, and reported to him by Corlett to have been concurred in by Wilson and Lenahan. Lenahan was not called as a witness. Wilson who was the first witness in the case, gave the testimony set forth above upon his first appearance on the stand. Later the testimony with respect to Corlett's reports, and the redrafted proposal itself were added to the record. Subsequently Wilson was called as a witness by the respondent and did not deny any part of Corlett's reports. That the reports accurately set forth the facts is fully corroborated by the circumstances above set forth, and particularly by the absence of any contradiction by Wilson or Lenahan.

nd by the fact that Corlett otherwise would hardly have equested Scott to come to the plant to reaffirm the final roposal. We find that the respondent agreed to the rein-tatement of Ramsey and the resumption of work with the ight of employees to join the union of their own choosing.

At the oral argument before the Board counsel for the A. F. of L. Affiliates urged that the termination of the trike was secured only because they sacrificed their rights nder the oral agreement. As stated by counsel, "If the A. F. of L. had said 'No, we are going to stand on our ights and the new men must join' . . . there never would have been a termination of that sit-down."[34] The ontention rests upon mere assertion. The employees had o knowledge of the oral argument, and the conduct of the trikers indicates no disposition to disregard any rights of he A. F. of L. Affiliates in the premises. Indeed their onduct with respect to the employees in the plating de-partment indicates the contrary. Moreover, there is no vidence that the respondent or the A. F. of L. Affiliates ver suggested that the strike be terminated under an rrangement whereby new employees would join the A. F. f L. Affiliates, and the reason for their failure to do so is xplainable by the fact, to which we have adverted above, hat they were concerned about the old and not the new mployees. The contention now advanced for the first time s sheer speculation and has no support in the record. ndeed it is squarely in conflict with the equally untenable laim of the respondent that the strike settlement did not rovide that employees might join the union of their own hoice.

On March 20, the respondent inserted an advertisement n a newspaper tersely announcing the closing of the plant n March 22 "as a result of" a letter received from the

[34] Fully stated, the contention was that "If the A. F. of L. had said No, we are going to stand on our rights and the new men must join'; nd we may seek a closed shop contract, there never would have been a ermination of that sit-down." As pointed out below, such a contract ould have been invalid by reason of the actions of the respondent during he week of March 19. Consequently the threat that such a contract ould be made would have been tantamount to a threat that the respon-ent would continue to interfere with, restrain, and coerce its employees n the exercise of the rights guaranteed them in Section 7 of the Act.

Cleveland Federation of Labor and the A. F. of L. Affiliates. The letter, dated March 20, stated that, "As the bargaining agent for your employees we request you to temporarily close your plant, pending present negotiations with you relative to matters covered by our contract with you." No testimony was offered to explain the reference to "pending present negotiations"; and under the circumstances it must have been a reference to negotiations prior to March 20.

Wilson testified that when the plant was evacuated on the afternoon of March 19, the respondent expected to resume operation on its next regular workday, Monday, March 22, and that the first intimation that he had that there was any question about it was a conference in the "late afternoon" on Saturday, March 20, at the office of the respondent's attorney, at which he, Tuteur, the respondent's president, and seven or eight A. F. of L. officials were present. The conference, Wilson testified, followed the receipt of the letter dated March 20. But this fails to account for either the reference in the letter to "pending present negotiations," or the publication of the letter in a newspaper on March 20. The conference must have occurred not later than March 19. This is borne out by Wilson's testimony as to what occurred at the conference.

Wilson testified that he, Julius Tuteur, Muehlhoffer and six or seven other representatives of the A. F. of L. were present at the conference and that the A. F. of L. representatives "asked us to close our plant while they might go over the situation and get their lines in order." Wilson testified that he did not know what led to the request "other than very obviously there was a group within the plant that was causing the dissension (sic) within the ranks," that though the respondent did not consider "there was any great proportion" of dissenters, they "knew there was a group that was trying, as reported to us at least, to proselyte members of another organization with whom we had a contract." At the conference, according to Wilson, the A. F. of L. officials "said it was an acute situation in our plant and we must close Monday morning or they would not appear for work Monday morning." What the A. F. of L. proposed to do after the shutdown, Wilson testified, was

not discussed. The A. F. of L. Affiliates urge, however, that they demanded the closing of the plant because of the strike, which, as we have stated above, they claim was an organizational tactic of the United and, therefore, likely to recur. As we have already pointed out there is no proof that such was the purpose of the strike, or that the A. F. of L. Affiliates so regarded it. The contention that the strike was in reason for the demand that the plant be shut down is equally without support in the record. None of the representatives of the A. F. of L. Affiliates called as witnesses testified as to the negotiations with the respondent with respect to the shutting of its plant, nor did Wilson testify that any such reason was assigned. The reason for the demand by the A. F. of L. Affiliates is plain, and was communicated to the respondent. The A. F. of L. Affiliates were concerned, and demanded a shut-down, simply because "there was a group that was trying . . . to proselyte members" of the A. F. of L. Affiliates and the A. F. of L. Affiliates were determined to prevent further proselyting.

The treat of a strike was not made by the A. F. of L. for the first time after the sit-down. It had been made as early as March 17 because the men in the machine shop were "joining the C. I. O." and now was renewed for the same reason. We have stated above that the original threat furnished no justification for the respondent's action in coercing its employees to join the A. F. of L. Affiliates. The repetition of the threat did not justify it in shutting the plant in order to prevent its employees from exercising their right to self-organization.

In its brief the respondent in seeking to justify the shut-down urged that:

> Respondent had no choice in the matter, . . . because American Federation of Labor, under its contract, was the bargaining agent for its employees. . . .

The contract with the A. F. of L. Affiliates afforded no basis for interfering with the right of its old employees, who constituted a large majority of all of its employees, to form, join or assist a labor organization of their own choos-

ing.[35] The contract no more entitled the respondent to shut down the plant in order to prevent these employees from "joining the C. I. O." than it excused the respondent's prior action in coercing them to join the A. F. of L. Affiliates.

The notice of the shut-down was, under the circumstances that preceded its publication, tantamount to a statement that the respondent, again at the instance of the A. F. of L. Affiliates, was taking action to prevent the organization of the United. The publication of the notice was itself, therefore, an interference with the rights of its employees under the Act, and the shut-down was a lock-out to restrain the exercise of those rights.

About 4 o'clock in the afternoon of March 19 a meeting of the United was held in the Post Office building in East Cleveland, at which a large number of employees attended.[36] Officers were elected and apparently it was voted to apply for a charter; an application for a charter was received by the national organization about March 21, and a charter issued about April 1.[37] The membership cards in A. F. of L. Affiliates, which the employees had signed in July 1936, provided that the employee thereby designated the appropriate A. F. of L. Affiliate as representative for collective bargaining, and further provided that:

> The full power and authority to act for the undersigned as described herein supersedes any power or authority heretofore given to any person or organization to represent me and shall remain in full force and effect for one year from date and thereafter, subject to thirty (30) days written notice of my desire to withdraw such power and authority to act for me in the matters referred to herein.

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[35] See discussion supra.

[36] Scott estimated there were about 550 persons present. There was no testimony as to whether the meeting came to the attention of the A. F. of L. Affiliates. It would seem likely that it did and it may have precipitated the demand for a shut-down. However, we make no finding on the point.

[37] The organization was chartered as United Electrical & Radio Workers of America, Local 720.

On March 28 a meeting of the United was held, again attended by a large number of persons, for the purpose of securing formal resignations from the A. F. of L. Affiliates, which might be presented in a body. On Friday, April 2, 1937, United mailed a letter to the respondent stating that a majority of the respondent's employees had resigned from the A. F. of L. Affiliates and were members of United; that United represented the majority "as to settlement of grievances arising under the existing contract"[38] and were ready to return to work under its terms; and that all grievances arising under the contract which affected members of United would thereafter be handled by the United committee signing the letter. Wilson testified that because the office was closed over the week end, the letter was not received until Monday, April 5, a few minutes after the plant had reopened under arrangement with the A. F. of L. Affiliates. Wilson did nothing about the letter other than to send it to counsel for the respondent.

We are satisfied that the arrangement under which the plant was reopened on April 5 was exactly set forth in a notice published by the respondent in the newspapers on April 3 and 4, 1937, directed to the respondent's employees. The notice stated that on July 6, 1936, the respondent, at the employees' request, had entered into a contract with the A. F. of L. Affiliates recognizing them as the employees' duly chosen agents for collective bargaining; that, thereafter, until June 23, 1937, it was agreed that the respondent employ only persons affiliated with the A. F. of L. Affiliates; and that, after conferences with the employees' agents, it was at their request resuming operations April 5, 1937, but only those employees who were members of the crafts under contract with the respondent would be employed. Attempt was made to explain by the testimony of Wilson, Gordon, Toth and Muehlhoffer that it had been agreed between the respondent and the A. F. of L. Affiliates on April 3, before the notice was published, that old employees were not to be required to show that they were in good standing with the A. F. of L. Affiliates in order to

[38]The "existing contract" obviously meant the written contract of June, 1936.

return to work; that in fact no such requirement was imposed except by the Polishers Union; and that even as to employees within the jurisdiction of the Polishers Union respondent was ignorant of this deviation from the terms of the agreement. We are entirely unable to credit this testimony.

Wilson admitted that he had refused to allow two employees to return to work on April 5 because they did not have clearance cards from the A. F. of L. Affiliates,[39] that he knew of other similar cases, and that the agreement was that the A. F. of L. Affiliates should have the final decision as to who would receive a card. Muehlhoffer summed up the agreement made on April 3 as providing that "all the people who go back in there to work the following Monday would carry a card issued by the respective organization." He also testified that "The entire responsibility of who was to go back in was turned over to the A. F. of L. Union." Wilson described the agreement in almost the same words. Muehlhoffer also admitted that even before the plant was reopened the Polishers Union had decided that their members who had become officers or committeemen in United would not be given clearance cards.

Muehlhoffer, Gordon and Toth testified that all of the A. F. of L. Affiliates, except the Polishers Union, gave a clearance card to all who applied, but none of them specifically denied the testimony of witnesses called by the Board who told in detail of cards being refused them, testimony which unlike the general statements by Muehlhoffer, Gordon, and Toth, is quite convincing.

Muehlhoffer testified that the respondent was not advised that some employees were refused cards. But it is clear, even from Wilson's own testimony, that the respondent expected the cards would be refused to some. Wilson admitted that simultaneously with the reopening of the plant on April 5 the respondent began hiring persons it had never previously employed, although no additional em-

[39] The clearance cards, captioned "Authorization For Representation," declared that the employee designated the A. F. of L. Unions as his representative for collective bargaining for 1 year, and were witnessed by the official issuing it.

ployees were needed for normal operations. Furthermore, if the respondent had not expected the A. F. of L. Affiliates to refuse cards to some employees, Wilson would hardly have "let word at the outside office that I was in no position to discuss matters with any individual and (such individuals) should go through the routine channels." Moreover, it was established by uncontradicted testimony that Julius Tuteur,[40] the respondent's president, in the presence of Paulus and Wilson, as well as Frank Ledasil, representative of the Federal Union, was advised by Mitchell France, an old employee and a member of the union, that he had been refused admittance to the plant on April 9 on the ground that he had no card; and that Tuteur himself had stated that France would have to obtain a card. Similarly it was shown that William H. Fogarty and Frederick Frank, old employees, told Paulus of their unsuccessful efforts to obtain a card, only to be advised that a card was essential.

The A. F. of L. Affiliates which had again conferred with the respondent during the week of March 21, circulated to their members on March 31, the following notice:

To employees of Electric Vacuum Company:

> Representatives of A. F. of L. organizations having a working agreement with the Electric Vacuum Company, have endeavored to clear up the situation that resulted in the closing of the plant. Conferences have been held with representatives of the Company and it is now our opinion that the real solution to the problem is proper enforcement of the present agreement, and that no one be allowed to resume work unless affiliated with these organizations.
>
> We are interested in having the plant reopen Monday April 5th and in order to get a definite expression from the membership a Special meeting will be held,
>
> Friday April 2nd at 2 P. M.
>
> 1000 Walnut Ave.,

* * *

[40] Although France referred to "John" Tuteur, he indicated that he was not certain of the surname, and clearly showed that he referred to respondent's president by describing the Tuteur to whom he had spoken as "The older Tuteur."

> We urge all members to attend this meeting so operations may be resumed Monday morning.

The meeting was held on April 2, and the employees present voted to return to work on April 5. Gordon testified that

> we call a general meeting for the membership and again the matter was broached that if they had stuck to strictly closed shop, we wouldn't have had any trouble at all because fourteen or fifteen people out there started this rumpus and the group was disgusted for their interference and losing them, and we were definitely instructed to tell the management that the group was going to work only under strictly closed shop conditions, and most of the conferences were on that subject.

Gordon further testified that at a conference with the respondent on the following day,

> we asked the management that the group wanted a strictly closed shop, and after them discussing the matter a while, it was agreed to let the matter lay for a while until after we got under operations and then we could go to work and get the closed shop through as to the wishes of the body.

Gordon was not a credible witness. We have referred above to his account of the conferences with the machine shop employees in the respondent's offices on March 16, 17 and 18. His version of the meeting of April 2 and the conference of April 3 is equally implausible. If the A. F. of L. Affiliates had consulted "the wishes of the body" on April 2, there would have been no occasion for deferring the demand for a closed shop until the sentiment of the members was ascertained. Moreover, Toth, Gordon's associate, admitted that the notice published by the respondent on April 3, had been prepared and agreed upon prior to the conference held that morning. Furthermore, the notice of the meeting issued by the A. F. of L. Affiliates on March 31, and the notice of reopening of the plant published by the

respondent on April 3 contain exactly the same misrepresentation as to the agreement between the respondent and the A. F. of L. Affiliates. Both misrepresented that the contract entered into in 1936 provided for a closed shop. Nor may the misrepresentations be regarded as "inadvertent."[41] Admittedly the respondent's notice was not published until approved at the conference on April 3 at the office of counsel for the respondent; and it was on its face a carefully worded statement. We have no doubt, and we find, that both notices were part and parcel of a single plan devised and executed by the respondent and the A. F. of L. Affiliates to liquidate the United activities among the respondent's employees, and to do so without risking the reaction that might follow upon an announcement that the respondent and the A. F. of L. Affiliates had decided to do so by entering into and enforcing a closed-shop agreement.

The notice published by the respondent unquestionably misrepresented to the employees the terms of the oral agreement of 1936; and the misrepresentation was obviously a deliberate attempt to give the semblance of legality to the respondent's conduct immediately prior to the shut-down, to justify the shut-down itself, and to conceal the fact that the closed-shop agreement set forth in the notice was of recent and consequently tainted origin. There hardly could have been devised a stratagem more calculated to aid the A. F. of L. Affiliates to retain and regard their members, and to cut the ground from under the employees who had sought to organize a United Group. Not only did the notice present an ultimatum; the respondent thereby also concealed from its employees that what was involved was their legally protected right to make a choice of representatives without thereby risking discharge.

If substance, though not in form, the arrangement effected between the respondent and the A. F. of L. Affiliates on or about April 3, 1937, was an abandonment of the oral agreement as insufficient to meet the exigencies of the

[41] At the oral argument before the Board counsel for the A. F. of L. Affiliates admitted that the notice published by the respondent on April 3 misrepresented that the agreement entered into in 1936 was a closed-shop contract, but sought to excuse the misrepresentation as "inadvertent."

situation and its replacement by a closed-shop agreement. This, the A. F. of L. Affiliates conceded at the oral argument before the Board, was the case. They contended, however, that such an agreement was entirely valid. The contention, however, was rested upon a number of claims which we have found without merit. Thus it is the position of the A. F. of L. Affiliates that prior to April 3, the respondent had engaged in no unfair labor practices, except the allegedly accidental discharge of Ramsey; that the respondent had been subjected to a sit-down strike called as an organizational tactic by the United and conducted by it with violence and destruction of property; that while the United was legally entitled to solicit members of the A. F. of L. Affiliates it had indicated a plant to cause defections by violent and unlawful means. Upon this view of the facts the A. F. of L. Affiliates contend further that they were authorized to enter into the closed-shop agreement since they had been designated as collective bargaining representatives by a majority of employees in July 1936 by membership cards which stated that such designation was for a period of 1 year, "and thereafter subject to thirty (30) days notice of desire to withdraw," and it is urged such designation must be presumed to have continued in effect until April 1937 in the absence of proof of notice of withdrawal. As we have pointed out above the afore-mentioned contentions with respect to the actions of the respondent and the United are entirely at variance with the facts. There is, consequently, not here presented the question whether during the term of a contract between a labor organization and an employer and within the period for which the labor organization had been designated as collective bargaining representative by a majority of employees, a supplementary closed-shop agreement may validly be made to prevent defections from such labor organization. The situation here presented is one where during the time preceding the making of such a supplementary agreement the respondent at the instance of the A. F. of L. Affiliates, had flagrantly interfered with, coerced, and restrained its employees in their right to join and assist the United, and had coerced them to affiliate with the A. F. of L. Affiliates. By

reason of such unfair labor practices by the respondent immediately antecedent to the supplementary closed-shop agreement, the new agreement was unquestionably illegal and void, and its publication and application constituted interference with the rights of its employees under the Act.

In fact, the arrangement of April 3, 1937, was merely another act of the same character as the previous interference, restraint, and coercion, and differed only in the irrelevant element of formality. The Act does not, however, permit illegality to become transmuted into legality by the embodiment of unfair labor practices in an agreement. That device affords neither an estoppel nor a franchise. Section 8 (3) of the Act carefully negatives such a possibility by excluding from permissible agreements imposing union membership as a condition of employment, an agreement entered into between employers and labor organizations which have been established, maintained, or assisted by unfair labor practices. And here there had been such assistance, persistent and solicited, if not demanded, by the A. F. of L. Affiliates.

The contention that the A. F. of L. Affiliates must be presumed to have represented a majority of the respondent's employees on April 3, is obviously beside the point. Section 8 (3) of the Act precludes the execution of a closed-shop with a labor organization established, maintained or assisted by unfair labor practices, irrespective of whether it has or has not been designated as collective bargaining agent by a majority of the employees. Accordingly it is unnecessary to determine whether, in the absence of the respondent's unfair labor practices, the A. F. of L. Affiliates would be presumed to have continued to be, on April 3, the bargaining agent designated by a majority of the respondent's employees. Moreover, having solicited the unfair labor practices which effectively impaired, if they did not completely destroy, the possibility of free choice of their bargaining agent by the respondent's employees, the A. F. of L. Affiliates, like the respondent, are in no position to invoke a rule of presumption which has for its purpose the determination of whether at a particular time a labor or-

ganization remains the freely designated representative of employees.

By May 20, 1937, the respondent had filed all the jobs that existed on March 22 and had increased its working force to approximately 1100 employees. According to the pay rolls, approximately 583 of that number were employees who had been with the respondent prior to June 1935, when the first oral agreement was made. As we have stated, employees who resumed their jobs after April 5, 1937, had been required to obtain clearance cards. Gordon testified that on May 20, 1937, there were no old employees who were not members of the A. F. of L. Affiliates and that substantially all other employees had joined.

On May 20, 1937, a new agreement was entered into between A. F. of L. Affiliates providing for recognition of the A. F. of L. Affiliates as the bargaining agents for all of the respondent's employees, and for a completely closed shop. This agreement, which by its terms ran for 1 year, and thereafter from year to year unless notice of termination was given 30 days before the end of the annual period, was individually approved by the large majority of the employees at a meeting of the A. F. of L. Affiliates held for that special purpose before the contract was executed. But what we have said with respect to the agreement of April 3, 1937, is entirely applicable to the contract of May 20, 1937. In the intervening period the respondent had merely continued its unfair labor practices under the guise of performance of a closed-shop agreement which had no validity. Manifestly under such circumstances the majority of the A. F. of L. Affiliates and the purported referendum are irrelevant.

We find that by the various activities set set forth above, the respondent, during the period beginning in March 1937 and continuing through May 20, 1937, aided in the organizational activities of the A. F. of L. Affiliates and hindered and impeded the organizational activities of United, and has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

B. The discriminations as to tenure of employment.

The complaint alleges that the respondent, on or about April 5, 1937, and at all times thereafter, failed and refused to recall 28 employees. No evidence was offered with respect to four of those named, Frank Erzen, Austin Ballard, Frank Hunck and William Krall. As to them the complaint will therefore be dismissed without prejudice.[42] As to each of the remaining 24 the allegations of the complaint are sustained.

Nineteen of the twenty-four employees as to whom we hold discrimination proven were old employees. In their case it is, of course, unnecessary to review the evidence as to the various occasions when they were refused employment because they had not obtained clearance cards, or when they were refused clearance cards, or when, after they had obtained clearance cards, they were refused employment allegedly because their jobs meanwhile had been filled by persons hired for the first time on or after April 5, 1937. We have pointed out in Section III A (2) above that these employees were never affected by the oral agreements,[43] and that the agreement of April 3, 1937, furnished no justification for requiring them to be members in good standing of the A. F. of L. Affiliates as a condition of returning to work.[44] We have also pointed out in Section III A (2) above that pursuant to the latter agreement employment was given only to those who complied with that

[42]Ramsey, who was discharged on March 18 and reinstated on March 19, was excluded from the plant when it reopened on April 5 because he had no clearance card. When he sought one the same day he was told his place was filled. He was successful in obtaining a card on April 21 and was given back his job the following day. The complaint sought no recovery for the employment lost by him between April 5 and April 22.

[43]Indeed, three of the old employees, John Kern, Nicholas Kozma and Edward Kern, were never members of the A. F. of L. Affiliates.

[44]It is unnecessary to decide whether application for and acceptance of a clearance card constituted becoming a member of the A. F. of L. Affiliates in the technical sense. We will assume such was its effect, or that in any case the condition was one that could be imposed, pursuant to the proviso clause of Section 8 (3), by agreement between an employer and a labor organization which then represented a majority of the employees and had not been established, maintained or assisted by unfair labor practices.

condition and that the places of those who did not were filled by persons hired to replace them.

The old employees were not required to go through the meaningless gesture of asking to be taken back without a clearance card; and they were within their rights in not applying for a clearance card. The refusal of employment to them was a fact immediate upon the reopening of the plant, and because the respondent never withdrew the conditions improperly imposed, the refusal was a continuing one.

Obviously there is no merit in the contention made by the respondent in its brief that in such a case an employer may plead as a defense that an employee tardily applied for reemployment under the illegal condition and was rejected because his place had been meanwhile filled by one never employed before. From and after April 5, 1937, these employees were in the same position as any employee avowedly discharged because of his union activities.[45] That thereafter such an employee obtains reemployment by accepting conditions which the employer had no right to impose merely ends the direct consequence of loss of wages and requires only that that circumstance be taken into account in determining the remedy for the unfair labor practice.

We accordingly find that respondent has at all times failed and refused to recall to employment the following persons employed by respondent when the plant was shut down on March 22, 1937: William Behrse, Steve Dragosa, William H. Fogarty, Mitchell France, Frederick Frank, John Kern, Edward Koutnik, Nicholas Kosma, Arthur Kruse, Howard Lowrance, Joseph Macho, John Masters, Alfred Meissner, George Onda, Edward Rericha,[46] Mike Smith, Arthur Troyan, and Theodore Vitosky. We also find that respondent failed and refused to recall to em-

[45] As we have recently stated, "To condition employment unlawfully upon membership in a particular union . . . . is equivalent to an outright discharge of those employees who refuse to accept the condition." Matter of Mason Manufacturing Company and United Furniture Workers of America, Local No. 576, 15 N. L. R. B., No. 38, at p. 24.

[46] Rericha, we have noted, was not allowed to work after March 11, but had been directed to return to his job on March 22.

ployment, except for the period from April 26, 1937, until May 10, 1937, Harold Keehl, employed by respondent when the plant was shut down on March 22, 1937.

Keehl's reemployment during this brief period seems quite accidental. He obtained a clearance card on April 9, 1937, returned to work on April 14, was notified by his foreman that he would have to secure the approval of Ledasil of the Federal Union; he did not do so, but returned to the plant on April 26 and worked until May 10 when his foreman told him that there was a notice for him to see Ledasil and pay up his dues in order to hold his job. When he was unable to do so at once, Ledasil refused to accept any postponement in payment and said he would be notified when he might present his case to the Union, but he never received such notice. We are satisfied that Keehl's brief period of reemployment was merely a temporary oversight on the part of the respondent and presents nothing essentially different from the other cases.

As stated above, we find that the charge of discrimination also sustained with respect to five new employees. What has been said by us as to the status of old employees on and after April 5, 1937, is no less applicable to them. True, prior to April 3, 1937, they might, after notice of the oral argument, have been refused employment unless they became or remained members in good standing in the A. F. of L. Affiliates. True also, where a valid agreement is replaced by an invalid one, the earlier agreement may retain its vitality for its original term. But we have found that on April 3, 1937, not only was a new agreement made, but the earlier oral agreement was mutually abandoned by the respondent and the A. F. of L. Affiliates as useless for their purposes, because of the rise of the United, and the fact that the majority of the respondent's employees were subject thereunder to no restraint against their becoming members of United and terminating their membership in the A. F. of L. Affiliates.

Moreover, we find that the oral agreement is irrelevant to the issue of discrimination since its existence was never brought to the notice of the new employees. The only notice they were given was of the agreement of April 3,

1937, an agreement which they were entitled to disregard. Certainly it cannot be said that they were somehow to divine from such a notice the existence of an antecedent valid oral agreement relating to new employees only. We have pointed out in Section III A (2) above that an employer may not even, pursuant to a valid agreement, threaten an employee with discharge for failure to join a labor organization unless the employee is advised of the existence of the agreement.[47] We see no reason to distinguish the case where the employer shuts down its plant and on reopening, without giving notice of the existence of an agreement, requires membership in a labor organization as a condition for returning to work.

Accordingly we find that the new employees were within their rights in not applying for a clearance card, that by virtue of the notices published on April 3 and 4, 1937, they were refused employment on the reopening of the plant and that the refusal was a continuing one. We accordingly find that the respondent has at all times failed and refused to recall to employment Leo Pierret, Jewell Smith, and Joseph Washko, employed by the respondent when the plant was shut down on March 22, 1937; and has failed and refused to recall to employment until May 19 and 24, 1937, respectively, James Mitchell and Rudolph Rummell, employed by the respondent when the plant was shut down on March 22, 1937, and who have since May 19 and 24, 1937, respectively, been given employment by the respondent at their former jobs.

On the basis of the foregoing, we find that the respondent, in refusing and failing to recall the aforesaid persons to employment except upon condition that they secure approval of the A. F. of L. Affiliates, has discriminated against said employees with respect to hire and tenure of employment in order to discourage membership in the United and encourage membership in the A. F. of L. Affiliates, and has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed by Section 7 of the Act.

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[47] See discussion, supra.

The respondent contends that it is, or should be, absolved of the charge of discrimination by reason of an agreement made on April 7, 1937, between the United and the A. F. of L. Affiliates whereby the latter agreed to issue clearance cards to all employees who became members. Though disclaiming any part in this agreement, the respondent claims the benefit thereof but urges that it is not chargeable with the immediate breach thereof by the A. F. of L. Affiliates, of which we find it had knowledge. Even if the agreement had been one to which the respondent were a party, or had been one which it had thereafter in some manner adopted, it is clear that the agreement would not affect the power of the United to file, and of the Board to accept, the charges in the present proceedings, or lead the Board, as a matter of discretion, to withhold action on the respondent's unfair labor practices. The Board was not a party to the agreement. Hence it is clear that, since Section 10 (a) of the Act makes exclusive the power of the Board to prevent persons from engaging in unfair labor practices affecting commerce, even an agreement binding a labor organization not to file charges of unfair labor practices with the Board, would not be binding upon the Board or in any manner affect the validity of charges filed with the Board.[48] The agreement in the instant case, moreover, did not purport to be, and was in no sense an agreement by the United not to file charges with the Board; on the contrary, it was no more than an attempt to secure employment for those of its adherents who were willing to comply with a condition which we have found was unlawfully imposed by the respondent. Indeed, the respondent, having misrepresented the facts with respect to the closed-shop agreement and thereby concealed its illegality, is hardly in a position to urge any argument of estoppel. Furthermore, the agreement of April 7 having been breached by refusals of the A. F. of L. Affiliates to issue clearance cards, the agreement affords no reason why the Board should not act upon the charges

[48] Matter of General Motors Corporation and Delco-Remy Corporation and International Union United Automobile Workers of America, Local No. 146, 14 N. L. R. B., No. 8.

filed by the United.[49] Finally, in the instant case, to give to the agreement of April 7 the effect now urged by the respondent, would be to sanction the continuance of the respondent's unfair labor practices, since, as we have pointed out above, the closed-shop agreements of April 3, and May 20, 1937, were merely the embodiment and formalization thereof. It is clear, therefore, that an order should issue that such unfair labor practices shall cease.[50]

We have pointed out in Section III A (2) above that at the time of the shut-down on March 22, 1937, the respondent's employees were working on a 40-hour week, and were entitled to seniority, and that these conditions were continued by the contract of May 20, 1937. We have also pointed out that 2 of the 24 employees as to whom the charges of discrimination were sustained were reemployed by the respondent. Of these two, Mitchell was earning 57 cents an hour and Rummell 54 cents an hour at the time of the shut-down on March 22, 1937. Neither of them earned anything from April 5, 1937, to the date of his reemployment.

The following employees were unemployed at the time of the hearing and had had no employment since the plant was shut down on March 22, 1937, at which time their hourly pay was at the rate indicated after their names: France, 58 cents; Koutnik, 73 cents; Kozma, 62 cents; Jewell Smith, 43 cents; Mike Smith, 60 cents; and Vitosky, 62 cents.

Keehl and Pierret had been earning 58 and 56 cents an hour, respectively, at the time of the shut-down. Since then, except for Keehl's temporary recall by the respondent from April 26 until May 10, 1937, they had worked only at odd jobs, from which Pierret had earned $8 and Keehl an unstated amount, which together with relief he had received, totaled approximately $90.

Fogarty who had received 58 cents an hour prior to the shut-down had been unemployed until May 31, 1937,

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[49] Cf. Matter of Harry A. Halff, doing business as The Halff Manufacturing Company and International Ladies Garment Workers Union, 16 N. L. R. B., No. 68, and cases cited in footnote 9 therein.

[50] See Section V, infra.

when he obtained a part-time job at which he had earned approximately $20.90 at the time of the hearing.

At the time of the hearing Dragosa and Machio had temporary jobs from which they had earned approximately $230 and $154.85, respectively, since the closing of the plant, at which time their hourly rate had been $1.05. Washko also had a temporary job at the time of the hearing and had had odd jobs. The amount of his earnings does not appear. Prior to the shutting of the plant his hourly rate had been 57 cents.

At the time of the hearing Frank, Kern, Kruse, Masters, Meissner and Troyan were employed. All but Kern, however, testified that they did not know whether their new jobs were permanent, and Kern stated that he believed his was temporary. Both Frank and Kern had been employed by respondent for 5 years, and were receiving 58 cents an hour before the shut-down. Frank did not obtain employment until May 25, 1937; his new job worked a 9-hour day; in it he had earned $67.20. Kern obtained other employment for the first time on April 28, 1937; and had earned on an average of $25 a week in his new job. Kruse, Masters, Meissner and Troyan were receiving $1.05 an hour when the plant was shut down. Kruse has been employed by respondent for 7 years; Masters for 14 years; Meissner for 8 years; and Troyan for 3 years. Kruse was unemployed until June 5, 1937, and had earned $30 since, at the daily rate of $5. Masters had obtained employment at least twice prior to the hearing. Altogether he had earned approximately $145, of which approximately $45 had been earned at a job obtained on June 9, 1937, at which he averaged about $7.50 a day. Meissner first secured work May 18, 1937, and had earned $85 at the new job, which paid less than he had received when employed by respondent. Troyan, like Masters had obtained employment at least twice since the shutdown; none of the jobs paid as high a rate as he had received at respondent's, and his earnings for 8 pay periods prior to the hearing totaled only $204.03.

Rericha had been employed by respondent for 11 years and had received an hourly rate of $1.05. He had obtained

a job for the first time on June 11, 1937. His earnings do not appear.

C. The Alleged Refusal to Bargain

No evidence of refusal to bargain was offered except the dispatch by United of the letter dated April 2 which we have summarized in connection with Section III A (2) above. In that connection we have also pointed out that the letter was not shown to have been received prior to the reopening of the plant on April 5, 1937, and that no answer was ever sent. The respondent's continued insistence upon membership in the A. F. of L. Affiliates as a condition of return to work was, however, at least equivalent to a categorical rejection of the demand set forth in the letter.

There was put in evidence a list of 543 names prepared by March 26, 1937, purportedly, from signed application cards of United. The list was prepared in connection with the meeting, referred to in Section III A (2) above, called by United to secure a declaration by those who had been members of the A. F. of L. Affiliates that they wished to sever such affiliation. Not more than 300 of those attending the meeting indicated such a wish. The evidence does not show how many others were present but did not speak up though they were members of the A. F. of L. Affiliates, or how many of those present had never become members of A. F. of L. Affiliates before joining the United.

Comparison of the list of March 26, 1937, with the 923 names on respondent's pay roll for the week preceding the shut-down of the plant indicates at least that approximately 500 of the 543 names correspond with those on the pay roll. However, the purpose for which the meeting of March 26, 1937, was held, indicates the United representatives felt employees had not understood that by signing application cards in United they thereby disavowed the right of the A. F. of L. Affiliates to represent them. In any event it is unnecessary to decide whether that inference should be drawn from the fact of the meeting, or whether it is over-

come by any other evidence,[51] since the evidence as to the preparation of the list itself is not sufficient to authenticate it as having been prepared from the application cards.

Lowrance, financial secretary and treasurer of the United local organized among respondent's employees, testified that he had received 623 signed application cards of United. He testified that 50 of the cards had disappeared from United's office and submitted the remaining 573 cards for confidential inspection of the Trial Examiner. Apparently the 623 cards represented an increment of 80 cards at some time since March 26, 1937. Lowrance, however, indicated no personal knowledge as to whether all the cards bore the names of the respondent's employees, and, in view of what we have found with respect to the list of March 26, 1937, we cannot say such was the case. Since United was unwilling to permit inspection of the cards by the respondent or the A. F. of L. Affiliates, they were refused admission in evidence.

The list put in evidence does not establish that the United on or about April 5, 1937, represented a majority of the respondent's employees in a unit consisting of all employees in the production and maintenance departments, exclusive of clerical and supervisory employees, which unit is alleged in the complaint, and admitted in the respondent's answer, to constitute an appropriate unit. Nor does the record include evidence which would enable us to determine whether the United on April 5, 1937, represented a majority of the respondent's employees in any of the five units which the A. F. of L. Affiliates urge that the record shows exist and each of which they claim constitutes an appropriate unit.[52] We will, therefore, dismiss the allegations of the amended complaint that the respondent has

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[51] The United application card stated that the applicant authorized and requested United "to represent me for the purposes of collective bargaining in regard to wages, hours and working conditions for a period of one year."

[52] The A. F. of L. Affiliates contend that the production and maintenance employees within their respective jurisdictions constitute five separate units.

engaged in unfair labor practices within the meaning of Section 8 (5) of the Act.

IV. The Effect of the Unfair Labor Practices upon Commerce

We find that the activities of the respondent set forth in Sections III A (2) and III B above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate and substantial relation to trade, traffic, and commerce among the several States, and have led and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

It is essential in order to effectuate the purposes and policies of the Act that the respondent be ordered to cease and desist from the unfair labor practices in which we have found it to have engaged, and in aid of such order and as a means for removing and avoiding the consequences of such practices, that the respondent be directed to take certain affirmative action, more particularly described below.

We have found that on April 3, 1937, the respondent entered into an agreement, supplementary to a written agreement made on July 6, 1936, which provided for hours and general working conditions. We have found that said supplementary agreement provided that membership in the A. F. of L. Affiliates would be a condition of continued employment by the respondent of persons then in its employ and a condition of employment of persons thereafter employed by the respondent. We have found that by reason of assistance theretofore rendered to said A. F. of L. Affiliates by various unfair labor practices set forth above, said supplementary agreement was not within the proviso clause of Section 8 (3) of the Act. We accordingly found that said supplementary agreement, the respondent's publication thereof and actions in accordance therewith, constituted interference, restraint, and coercion of the respondent's employees in the exercise of the rights guaran-

teed under the Act. We have accordingly found that the respondent by making said supplementary agreement, publishing the same, and acting in accordance with its terms at all times until May 20, 1937, further assisted said A. F. of L. Affiliates by unfair labor practices. We have further found that on May 20, 1937, the respondent entered into a superseding agreement with the A. F. of L. Affiliates which incorporated the terms of said supplementary agreement. We have found that by reason of the assistance theretofore rendered to said A. F. of L. Affiliates by the respondent by the various unfair labor practices set forth above, including the supplementary agreement of April 3, 1937, the respondent's publication thereof and actions in accordance therewith, the provisions of said agreement of May 20, 1937, providing that employment by the respondent should be conditioned upon membership in said A. F. of L. Affiliates was not an agreement which was within said proviso clause of Section 8 (3) of the Act. We accordingly found that said agreement constituted interference, restraint, and coercion of the respondent's employees in the exercise of their said rights. It is plain that under these circumstances to render our cease and desist order effective it is necessary that the respondent be specifically directed to cease giving effect to so much of said agreement of May 20, 1937, as imposes said condition of employment, and to any agreement which may now be in effect, in so far as such agreement requires as a condition of employment membership in said A. F. of L. Affiliates.

We have pointed out that by reason of the respondent's interference, restraint, and coercion its employees have not been free at any time since April 3, 1937, to exercise freely their right to designate or select representatives for collective bargaining. Yet, by its terms, the agreement of May 20, 1937, has renewed itself for a second, and now for a third year. To permit the renewal provision of a contract entered into under such circumstances to have force and effect even if another labor organization were hereafter designated by the employees as their representative would itself serve only to interfere with, restrain, and coerce employees from designating such other labor organization.

While under the special circumstances of the present case, we shall not require the respondent to disavow altogether the agreement of May 20, 1937, in order to permit an unfettered choice by employees of their representatives, we do find it unquestionably necessary, so as to remove the effect of the respondent's interference, coercion, and restraint, since March 1937, to require that the respondent, if, as and when another labor organization shall have been certified by the Board as the exclusive representative of its employees for the purposes of collective bargaining, shall cease and desist from giving any effect to said agreement and to any extension, renewal, modification, or supplement thereof, or to any superseding contract which may now be in effect.

We have also found that respondent discriminated, within the meaning of the Act, in regard to hire and tenure of employment of William Behrse, Steve Dragosa, William H. Fogarty, Mitchell France, Frederick Frank, Harold Keehl, John Kern, Edward Koutnik, Nicholas Kozma, Arthur Kruse, Howard Lowrance, Joseph Macho, John Masters, Alfred Meissner, James Mitchell, George Onda, Lee Pienret, Edward Rericha, Rudolph Rummell, Jewell Smith, Mike Smith, Arthur Troyan, Theodore Vitosky, and George Washko, by failing and refusing to recall said persons to employment on April 5, 1937, or at any time thereafter, except that Mitchell was recalled to employment on May 19, 1937, and Rummell on May 24, 1937, and Keehl was temporarily called to reemployment from April 26 until May 10, 1937. Accordingly we shall order the respondent to make these employees whole for any loss of pay they have suffered by reason of said failure and refusal to recall them to employment,[53] by payment to each of them a sum of money equal to the amount he would normally have earned as wages from April 5, 1937, to the date of reinstatement or placement on a preferential list as hereinafter

[53] The circumstances that Rummell was ill for a period of 2 or 3 weeks between April 5 and May 24, 1937 will, of course, be taken into account in determining his loss of pay during said period.

provided, less his net earnings[54] during said period.[55] However, since we, on our own motion, gave notice on March 16, 1939, of intention to vacate, and on April 11, 1939, vacated the decision and order issued by the Board on July 7, 1938, the respondent will be relieved from paying said employees back pay with respect to the period from March 16, 1939, to the date of our present order.

The employees whom we shall order made whole other than Mitchell and Rummell shall be reinstated by the respondent in the manner set forth below. We are of the opinion that the usual remedy in such cases is here necessary to effectuate the purposes and policies of the Act. Accordingly, we shall order the respondent, upon application, to offer these employees reinstatement to their former[56] or substantially equivalent positions. All, or such number as may be necessary, of the employees hired by the respondent after March 19, 1937, and not in the employ of the respondent on March 19, 1937, shall be dismissed to provide employment for those to be offered, and who under our order apply for, reinstatement. If thereupon, despite such reduction in force, there is not sufficient employment immediately available for the employees presently employed by the respondent, excluding those so dismissed, and the employees to be offered and who apply for reinstatement, all available positions shall be distributed among the employees presently employed, except those so dismissed, and

[54] By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See Matter of Crossett Lumber Company and United Brotherhood of Carpenters and Joiners of America, Lumber and Sawmill Workers Union, Local 2590, 8 N. L. R. B. 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects are not considered as earnings, but, as provided below in the Order, shall be deducted from the sum due the employee and the amount thereof shall be paid over to the appropriate fiscal agency of the Federal, State, county, municipal, and other government or governments which supplied the funds for said work-relief projects.

[55] This is the same affirmative action as was ordered by the Board on July 7, 1938, with respect to said employees.

[56] By former position is meant the respective positions held on March 19, 1937.

the employees to be offered reinstatement, in accordance with the respondent's usual method of reducing its force, without discrimination against any employee because of his union affiliation and activities, following such a system of seniority or other procedure to such extent as has heretofore been applied in the conduct of the respondent's business. In making such distribution the employees to be offered reinstatement shall be considered as entitled to the seniority and other rights and privileges which would have been theirs had the respondent not failed and refused to recall them to employment on April 5, 1937.

Those employees remaining after such distribution, for whom no employment is immediately available, shall be placed upon a preferential list with priority determined among them by such system of seniority or other procedure as has been heretofore followed by the respondent, and shall thereafter, in accordance with such list, be offered employment in their former or in substantially equivalent positions, as such employment becomes available and before other persons are hired for such work.

The Representation Case

As we have pointed out in Section III C above, the United contends that all of the production and maintenance employees at the respondent's plant, excluding supervisory and clerical employees constitute an appropriate unit, whereas the A. F. of L. Affiliates urge that the production and maintenance employees within their respective jurisdictions constitute five separate units. The A. F. of L. Affiliates have asked that the record be reopened so as to permit them to adduce additional evidence upon the question of the appropriate unit. In view, however, of the length of time that has elapsed since the filing of the petition and the holding of the hearing thereon, we shall deny the application, but will dismiss the representation proceedings without prejudice to the filing of a new petition by either the United or the A. F. of L. Affiliates.

Upon the basis of the foregoing findings of fact and the entire record in the proceeding, the Board makes the following:

Conclusions of Law

1. International Molders Union of North America, Local No. 430; Pattern Makers Association of Cleveland and Vicinity; Metal Polishers International Union, Local No. 3; International Association of Machinists, District No. 54; Federal Labor Union No. 18907; and United Electrical & Radio Workers of America are labor organizations within the meaning of Section 2 (5) of the Act.

2. The respondent, by discriminating in regard to the hire and tenure of employment of William Behrse, Steve Dragosa, William H. Fogarty, Mitchell France, Frederick Frank, Harold Keehl, John Kern, Edward Koutnik, Nicholas Kozma, Arthur Kruse, Howard Lowrance, Joseph Macho, John Masters, Alfred Meissner, James Mitchell, George Onda, Leo Pierret, Edward Rericha, Rudolph Rummell, Jewell Smith, Mike Smith, Arthur Troyan, Theodore Vitosky, and George Washko, thereby encouraging membership in the first five labor organizations mentioned in paragraph 1 above, and discouraging membership in United Electrical & Radio Workers of America, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

3. The respondent, by interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, has engaged and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

5. The respondent has not engaged in unfair labor practices within the meaning of Section 8 (5) of the Act.

ORDER

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Electric Vacuum

Cleaner Company, Inc., and its officers, successors, and assigns, shall:

1. Cease and desist:

(a) From discouraging membership in United Electrical & Radio Workers of America or any other labor organization by refusing to reinstate, or otherwise discriminating against its employees in regard to hire and tenure of employment, or any term or condition of employment;

(b) From encouraging membership in International Molders Union of North America, Local No. 430; Pattern Makers Association of Cleveland and Vicinity; Metal Polishers International Union, Local No. 3; International Association of Machinists, District No. 54; Federal Labor Union No. 18907; or any other labor organization by discharging, refusing to reinstate, or otherwise discriminating against its employees in regard to hire or tenure of employment, or any term or condition of employment;

(c) From giving any effect to the provisions of paragraph (c) of Article III of the agreement dated May 20, 1937, with the labor organizations designated by name in paragraph 1 (b) of this Order, that: "The Employer[57] agrees to employ only members of the Unions[58] in good standing in their respective Unions, and should the employer require more employees than those now employed, the Employer will secure such employees through the Unions. If, however, the Unions are unable to furnish such employees, the employer may secure them elsewhere, it being understood, however, that such employees so secured shall become members of the Union," or to any agreement which may now be in effect, in so far as such agreement requires as a condition of employment membership in the labor organizations, or any of them, designated by name in paragraph 1 (b) of this Order;

(d) From giving any effect to said agreement dated May 20, 1937, or to any extension, renewal, modification, or supplement thereof, or to any superseding agreement which may now be in effect, if, as and when any labor organization

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[57] I. e., respondent, Electric Vacuum Cleaner Company, Inc.

[58] I. e., the labor organizations designated by name in paragraph 1 (b) of this Order.

other than the labor organizations designated by name in paragraph 1 (b) of this Order shall hereafter be certified by the National Labor Relations Board as the exclusive representative of its employees for the purposes of collective bargaining;

(e) From in any other manner interfering with, restraining, or coercing its employees in the exercise of the rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Offer, upon application, to William Behrse, Steve Dragosa, William H. Fogarty, Mitchell France, Frederick Frank, Harold Keehl, John Kern, Edward Koutnik, Nicholas Kozma, Arthur Kruse, Howard Lowrance, Joseph Macho, John Masters, Alfred Meissner, George Onda, Leo Pierret, Edward Rericha, Jewell Smith, Mike Smith, Arthur Troyan, Theodore Vitosky, and George Washko, reinstatement to their former or substantially equivalent positions with the respondent, without prejudice to their seniority and other rights and privileges, dismissing, if necessary, all of the employees presently working for the respondent who were hired since March 19, 1937, and not in its employ on March 19, 1937, in the manner set forth in the Section entitled, "The remedy," above; and place those employees for whom employment is not immediately available upon a preferential list and offer them employment as it becomes available, in the manner set forth in said Section;

(b) Make whole the following named employees for any loss of pay they have suffered by reason of failure or refusal to recall them to employment on April 5, 1937, and thereafter, by payment to each of them of a sum of money equal to the amount which he normally would have earned as wages from April 5, 1937, to March 16, 1939, and from the date of this Order to the date of his reinstatement

or placement on a preferential list pursuant to paragraph 2 (a) of this Order, less his net earnings during said period; deducting, however, from the amount otherwise due to each such employee, monies received by him during said period for work performed upon Federal, State, county, municipal, or other work-relief projects, and pay over the amount, so deducted, to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said work-relief projects: William Behrse, Steve Dragosa, William H. Fogarty, Mitchell France, Frederick Frank, John Kern, Edward Koutnik, Nicholas Kozma, Arthur Kruse, Howard Lowrance, Joseph Macho, John Masters, Alfred Meissner, George Onda, Leo Pierret, Edward Rericha, Jewell Smith, Mike Smith, Arthur Troyan, Theodore Vitosky, and George Washko;

(c) Make whole Harold Keehl for any loss of pay he may have suffered by reason of failure or refusal to recall him to employment on April 5, 1937, and thereafter, except temporarily from April 26 until May 10, 1937, by paying him a sum of money equal to the amount which he normally would have earned as wages from April 5 to April 26, 1937, and from May 10, 1937 to March 16, 1939, and from the date of this Order to his reinstatement or placement on a preferential list pursuant to paragraph 2 (a) of this Order, less his net earnings during said periods; deducting, however, from the amount otherwise due him, monies received by him during said periods for work performed upon Federal, State, county, municipal, or other work-relief projects, and pay over the amount, so deducted, to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said work-relief projects;

(d) Make whole James Mitchell and Rudolph Rummell for any loss of pay they may have suffered by reason of refusal or failure to recall them to employment on April 5, 1937, and thereafter until May 19 and 24, 1937, respectively, by payment to each of them a sum of money equal to the amount which he normally would have earned as wages from April 5 to May 19, 1937, in the case of James Mitchell

and from April 5 to May 24, 1937, in the case of Rudolph Rummell, less his net earnings during said period; deducting, however, from the amount otherwise due each of them monies received by him during said period for work performed upon Federal, State, county, muncipal, or other work-relief projects, and pay over the amount, so deducted, to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for such work-relief projects;

(e) Immediately post notices in conspicuous places throughout its plant, and maintain such notices for a period of sixty (60) consecutive days, from the date of such posting stating that the respondent will cease and desist in the manner set forth in 1 (a), (b) (c), (d), and (e) and that it will take the affirmative action set forth in 2 (a), (b), (c), and (d) of this Order;

(f) Notify the Regional Director for the Eighth Region, Cleveland, Ohio, in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.

It Is Further Ordered that the complaint, in so far as it alleges that the respondent discriminated in regard to the hire and tenure of employment of Frank Erzen, Austin Ballard, Frank Hunek, and William Krall, within the meaning of Section 8 (3) of the Act, be, and it hereby is, dismissed without prejudice.

And It Is Hereby Further Ordered that the complaint, in so far as it alleges that the respondent has engaged in unfair labor practices within the meaning of Section 8 (5) of the Act, be, and it hereby is, dismissed.

And It Is Hereby Further Ordered that the petition for investigation and certification of representatives filed herein, be, and it hereby is, dismissed without prejudice.

Signed at Washington, D. C., this 21st day of December, 1939.

J. Warren Madden,
Chairman,
Edwin S. Smith,
Member,
National Labor Relations Board.

(Seal)

ORDER CORRECTING DECISION AND ORDER

(Docketed March 13, 1940)

On December 21, 1939, the National Labor Relations Board issued its Decision and Order in the above-entitled proceedings.[1] In the third sentence of the fifth paragraph of Section V of the Decision and Order, designated "The Remedy," the words, ", upon application,"; in the fourth sentence of said paragraph, the words, ", and who under our order apply for,"; and in the fifth sentence of said paragraph, the words, "and who apply for"; have been inserted erroneously. In paragraph 2 (a) of the portion of the Decision and Order which is designated "Order," the words ", upon application," also been inserted erroneously.

It Is Hereby Ordered that the Decision and Order be, and the same hereby is, amended by striking from the third sentence of the fifth paragraph of Section V of the Decision and Order, the words, ", upon application,"; by striking from the fourth sentence of said paragraph the words, ", and who under our order apply for,"; and by striking from the fifth sentence of said paragraph the words, "and who apply for"; so that said fifth paragraph of Section V of the Decision and Order shall read as follows:

"The employees whom we shall order made whole other than Mitchell and Rummell shall be reinstated by the respondent in the manner set forth below. We are of the opinion that the usual remedy in such cases is here necessary to effectuate the purposes and policies of the Act. Accordingly, we shall order the respondent to offer these employees reinstatement to their former or substantially equivalent positions. All, or such number as may be necessary, of the employees hired by the respondent after March 19, 1937, and not in the employ of the respondent on March 19, 1937, shall be dismissed to provide employment for those to be offered reinstatement. If thereupon, despite such reduction in force, there is not sufficient employment immediately available for the employees presently employed by the respondent, excluding those so dismissed, and the employees to be offered reinstatement, all available positions shall be distributed among the employees presently employed, except those so dismissed, and the em-

[1] 18 N. L. R. B., No. 75.

ployees to be offered reinstatement, in accordance with the respondent's usual method of reducing its force, without discrimination against any employee because of his union affiliation and activities, following such a system of seniority or other procedure to such extent as has heretofore been applied in the conduct of the respondent's business. In making such distribution the employees to be offered reinstatement shall be considered as entitled to the seniority and other rights and privileges which would have been theirs had the respondent not failed and refused to recall them to employment on April 5, 1937."

And It Is Hereby Further Ordered that the Decision and Order be, and the same hereby is, further amended by striking from paragraph 2 (a) of the portion of said Decision and Order designated "Order" the words, ", upon application," so that said paragraph 2 (a) shall read as follows:

"(a) Offer to William Behrse, Steve Dragosa, William H. Fogarty, Mitchell France, Frederick Frank, Harold Keehl, John Kern, Edward Koutnik, Nicholas Kozma, Arthur Kruse, Howard Lowrance, Joseph Macho, John Masters, Alfred Meissner, George Onda, Leo Pierret, Edward Rericha, Jewell Smith, Mike Smith, Arthur Troyan, Theodore Vitosky, and George Washko, reinstatement to their former or substantially equivalent positions with the respondent, without prejudice to their seniority and other rights and privileges, dismissing, if necessary, all of the employees presently working for the respondent who were hired since March 19, 1937, and not in its employ on March 19, 1937, in the manner set forth in the Section entitled, 'The remedy,' above; and place those employees for whom employment is not immediately available upon a preferential list and offer them employment as it becomes available, in the manner set forth in said Section;"

And It Is Hereby Further Ordered that the Decision and Order, as printed, shall appear as hereby amended.

Signed at Washington, D. C., this 13th day of March, 1940.

J. Warren Madden,
Chairman,
Edwin S. Smith,
Member,
National Labor Relations Board.

(Seal)

IN THE UNITED STATES CIRCUIT COURT OF APPEALS
For the Sixth Circuit

Electric Vacuum Cleaner Company, Inc.,
Petitioner,
v.
National Labor Relations Board,
Respondent.
No. 8206

International Molders Union of North America Local No. 430; Pattern Makers Association of Cleveland And Vicinity; International Association of Machinists, District No. 54; Metal Polishers International Union, Local No. 3, and Federal Labor Union, No. 18907, all affiliated with the American Federation of Labor,
Petitioners,
v.
National Labor Relations Board,
Respondent.
No. 8224

NOTICE OF MOTION TO DISMISS PETITION TO REVIEW AND SET ASIDE AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD
(Filed April 24, 1939)

To: Messrs. Cannon, Spieth, Taggart, Spring & Annat
Joseph A. Padway
Attorneys for Petitioner:

Please Take Notice that on the 27th day of April, 1939, at 10 o'clock in the forenoon, or as soon thereafter as counsel can be heard, before the United States Circuit Court of

Appeals for the Sixth Circuit, the National Labor Relations Board, respondent in the above entitled cause, will move to dismiss the petition to review and set aside an order of the National Labor Relations Board.

A typewritten copy of said motion is served upon you herewith.

Charles Fahy,
General Counsel,
National Labor Relations Board.

Dated: April 21, 1939,
Washington, D. C.

MOTION OF NATIONAL LABOR RELATIONS BOARD TO DISMISS PETITIONS TO REVIEW AND SET ASIDE AN ORDER OF THE BOARD

(Filed April 24, 1939)

Comes now the National Labor Relations Board, respondent in the above entitled cases, and moves the Court that the petitions herein to review and set aside an order of the Board, dated July 7, 1938, be dismissed. In support of said motion the Board respectfully shows to the Court as follows:

1. Pursuant to authority conferred by Section 10(c) of the National Labor Relations Act (49 Stat. 449 U. S. C. sup. II, Title 29, Sec. 151, et seq.), the Board on July 7, 1938, issued an order against petitioner, Electric Vacuum Cleaner Company, Inc., directing it to cease and desist from certain unfair labor practices and to take certain affirmative action found by the Board to be necessary to effectuate the policies of the Act.

2. On February 2, 1939, and March 4, 1939, respectively, pursuant to Section 10(f) of the Act, petitioner, Electric Vacuum Cleaner Company, Inc., and petitioner, International Molders Union of North America, Local No.

430, et al., filed in this Court a petition to review and set aside said order of the Board, a copy of each of said petitions was duly served upon the Board. However, neither petitioner filed with the Court a transcript of the entire record in the proceeding, certified by the Board, as they are required to do by Section 10(f).

3. On March 16, 1939, the Board duly notified petitioners that the Board would on April 6, 1939, unless sufficient cause to the contrary should then appear, vacate and set aside its findings and order of July 7, 1938, for the purpose of further proceeding before the Board. Said notice was likewise duly served upon all other parties to the proceeding before the Board. A copy of said notice is attached hereto, marked Exhibit "A," and is made a part hereof. Thereafter by letter dated April 5, 1939, the Board extended the time of petitioner, International Molders Union of North America, Local No. 430, et al., for filing its exceptions to April 8, 1939. A copy of said letter is attached hereto, marked Exhibit "B," and is made a part hereof. Neither petitioner filed an answer or objections to the said notice of March 16, 1939.

4. On April 11, 1939, pursuant to said notice of March 16, 1939, the extension granted by said letter of April 5, 1939, and for the purpose of further proceedings before the Board, the Board entered its order setting aside its said findings and order of July 7, 1938, and directing that such further proceedings be taken as the Board may consider are necessary or desirable. Said order was duly served upon petitioner and all other parties to the proceedings before the Board. A copy of said order is attached hereto, marked Exhibit "C" and is made a part hereof.

5. Said order of the Board of April 11, 1939, was made pursuant to the authority conferred by paragraph (d) of Section 10 of the Act, which provides:

> "Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it."

As stated above, no transcript of the record in the proceedings before the Board has been filed in this Court or in any other Court.

6. The issues raised by petitioners' petitions to review and set aside the order of the Board of July 7, 1938, have become moot by reason of the action of the Board of April 11, 1939, setting aside said order. Paragraph (f) of Section 10 of the Act, pursuant to the terms of which the petitions to review were filed, provides that any person aggrieved by "a final order of the Board" may obtain a review of such order in the appropriate circuit court of appeals of the United States. Since the order of the Board of July 7, 1938, has been set aside, there is now no final or other order outstanding against petitioner, and hence there is nothing for this Court to review or to which its jurisdiction may attach under the terms of said paragraph (f) of Section 10. In re National Labor Relations Board, 304 U. S. 486.

Wherefore, the National Labor Relations Board prays that the petitions to review and set aside an order of the National Labor Relations Board be dismissed and for such other and further relief as the Court may deem meet and proper.

Charles Fahy,
General Counsel.

Dated: April 21, 1939.

EXHIBIT A

Note: Exhibit A is a copy of the Notice to Vacate, which will be found on page 80.

EXHIBIT C

Note: Exhibit C is a copy of the Order Vacating and Setting Aside Findings of Fact, Conclusions of Law, Order, and Direction of Election, which will be found on page 82.

EXHIBIT "B"

April 5, 1939.

Mr. Joseph A. Padway,
321 Tower Building
Washington, D. C.

Re: Electric Vacuum Cleaner Co. et al.,
Cases Nos. C-266 and R-353

Dear Mr. Padway:

This will acknowledge receipt of your letter of March 30 with respect to the above-entitled cases.

As you know, the Board, prior to the issuance of the Decision, Order and Direction of Election in these cases, had adopted the policy of issuing proposed findings and a proposed order where no intermediate report was made by the trial examiner. Failure to do so in this instance was entirely inadvertent and is intended to be corrected by vacation of the Findings of Fact, Conclusions of Law, Order and Direction of Election. The Board also desires to give the entire case further consideration.

I trust that this furnishes you the information you wish. Under the circumstances you will be allowed until Friday, April 8, to file in writing objections, and arguments in support thereof, to the vacating and setting aside of said Findings of Fact, Conclusions of Law, Order, and Direction of Election.

Very truly yours,

Nathan Witt,
Secretary.

Ip; KL
NW/eb

ORDER

(Filed May 9, 1939)

Before: Hicks, Simons and Allen, JJ.

It appearing to the Court that the National Labor Relations Board has entered an order setting aside its findings and order of July 7, 1938;

It is therefore ordered that the petitions to review and set aside the order of the Board filed herein by Electric Vacuum Cleaner Company, Inc. and by International Molders Union of North America, Local No. 430, et al., be and the same are hereby dismissed pursuant to motion of the National Labor Relations Board.

Approved for Entry:

Xen Hicks,
Circuit Judge.

1 **TRANSCRIPT OF EVIDENCE**

Before the

NATIONAL LABOR RELATIONS BOARD

Eighth Region

In the Matter of:

Electric Vacuum Cleaner Company, Inc.

and

United Electrcial & Radio Workers of America, Local 720.

Case No. VIII-C-73
VIII-R-15

Room 2, New Court House,

Cleveland, Ohio,

Thursday, June 10, 1937

The above-entitled matter came on for hearing, pursuant to notice, at 11:45 o'clock a. m.

Before William P. Ringer, Trial Examiner.

APPEARANCES:

Harry L. Lodish, Regional Attorney, on behalf of the National Labor Relations Board.

L. C. Spieth and H. A. Spring, 1568 Union Trust Building, Cleveland, Ohio, on behalf of Electric Vacuum Cleaner Company, Inc.

Sam H. Griff, 610 Public Square Building, Cleveland, Ohio, on behalf of United Electrical & Radio Workers of America, Local 720.

Edwin F. Woodle and Bernard Wachtel, 318 Leader Building, Cleveland, Ohio, on behalf of A. F. of L. Affiliated Unions.

John H. Orgill, 1000 Guarantee Title Building, Cleveland, Ohio, on behalf of Cleveland Federation of Labor.

2 PROCEEDINGS

Trial Examiner Ringer: We will proceed now, gentlemen, and let there be no smoking except during intermission. I understand, Mr. Regional Attorney, that this is a consolidated case, two different matters. Am I correct in that?

Mr. Lodish: Yes.

Trial Examiner Ringer: Will you give the numbers to the Reporter?

Mr. Lodish: This is a consolidation of VIII-C-73 and VIII-R-15.

Trial Examiner Ringer: Let the respective counsel indicate their names and their representations and their addresses.

Mr. Lodish: Harry L. Lodish for the Board, 915 Guarantee Title Building.

Mr. Spieth: L. C. Spieth and H. A. Spring, 1565 Union Trust Building, for the respondent.

Mr. Woodle: Mr. Wachtel and Mr. Woodle for Metal Polishers' International, International Association of Machinists, International Molders Union, Federal Labor Union and Pattern Makers Association.

Mr. Orgill: J. H. Orgill, 1000 Guarantee Title Building, representing the Cleveland Federation of Labor.

Mr. Griff: Sam H. Griff, 610 Public Square Building, representing the United Electrical and Radio Workers
3 of America, Local 720.

Mr. Lodish: At this time, Mr. Examiner, I would like to introduce into the record the formal file in the case, to be known as Board's Exhibit No. 1, containing the charge, the complaint, the motion by Electric Vacuum Cleaner Company, the amended complaint, the answer to the amended complaint, the order of consolidation, the petition for investigation and certification, the Regional Office's reports, the order directing investigation and hear-

ing, notice of hearing, amended notice of hearing, an affidavit of service showing service upon the Electric Vacuum Cleaner Company on May 21st, and then again on May 28th, affidavit of service showing the service on the same dates on the United Electrical Workers of America; order of consoldiation, affidavit of service showing service upon the Machinists Union May 21 and then again on May 28th; affidavit of service, showing service upon the Metal Polishers Union and the same dates; likewise an affidavit of service upon the Pattern Makers Union on the same dates; and another one upon the International Molders Union the same dates; and there are affidavits of service, showing postponement by wires to June 7th, same time and place, all the aforementioned parties being notified; and a further affidavit of service by wire, showing a postponement to June 9th, the same time and place, and all the aforementioned parties being notified; and lastly, the order designating yourself as Trial Examiner.,

4 Trial Examiner Ringer: Is there any objection by anyone to the admission of that?

(No response.)

Trial Examiner Ringer: They will be admitted then.

(The papers referred to were received in evidence and marked "Board's Exhibit No. 1.")

Trial Examiner Ringer: May I ask this: In this consolidation, Mr. Lodish, and the other gentlemen, are all of you appearing in the consolidated cases, or do you want to keep that separate also, as to the introduction of evidence; just let everything come in?

Mr. Lodish: The purpose of consolidation is to eliminate the necessity of receiving the same facts in two different matters where they are material and where they will be the same. The parties to this case are as follows, the C case is an action by the Board against the company; the R case is an action in which the Board is interested only to the point of establishing its jurisdiction, and from then on it is a matter that concerns the respective unions and the respective claims of representing the majority, and the appropriate union and other questions. It has

been indicated to me that some of the parties to one action may ask permission to intervene in another. Whether that be eventually the fact or not, for the sake of convenience, we can probably all agree that the hearing proceed as one, and that it be understood that all facts material to each case be considered as evidence in that particular
5 case.

Trial Examiner Ringer: Is that satisfactory to counsel?

Mr. Spieth: I am not familiar enough, your Honor, with the procedure to say. In the case some place the Respondent is entitled to file an answer, as I understand it, the chief complaint is predicated on certain charges against the respondent. In the R case, as they call it, the respondent filed no answer, but under the Act, as I understand it, it has the privilege of participating to the extent of examining witnesses. It seems to me that there may be places in the trial of these cases on a consolidated basis where the company might not have the interest and would not want to necessarily have one group of facts introduced generally and being placed to a disadvantage in having to object to evidence that might be competent in one case against its being considered in connection with the other case. The facts I think are very largely the same in both cases, with the exception in the C case there are some twenty-eight individuals who are charging discrimination.

Trial Examiner Ringer: Of course, we are going to try the two consolidated matters together. All I want to find out is whether all of you are going to have your appearances in the consolidated case in general, whether that is satisfactory?

Mr. Spieth: I have no objection to that.

Mr. Woodle: We are satisfied.

6 Mr. Spieth: Inasmuch as the Exhibit has been offered in evidence, may I ask that in the answer filed by the Respondent, on Page Four, Paragraph Thirteen, the first line, the date there is recited in the answer as being June 23rd and that should be June 22nd.

Trial Examiner Ringer: You move to amend your

answer in that respect by correction of the actual date?

Mr. Spieth: Yes.

Mr. Lodish: No objection.

Trial Examiner Ringer: Amend it. We will start then at one-thirty this afternoon, and I would like to ask the cooperation of all counsel. This is the kind of a hearing that could very easily run to great length on cross-examination and so forth and, in my experience, being an attorney, very frequently on cross-examination bring out matters somewhat from habit. Now, if all of you will cooperate with me in hurrying matters along here and not go any further than is really necessary for the interests of your case, I would appreciate it very much. We will meet at one-thirty.

(Thereupon, at 12 o'clock noon a recess was taken until 1:30 o'clock p. m.)

After Recess

(The hearing was resumed at 1:30 o'clock p. m. pursuant to the taking of recess.)

Trial Examiner Ringer: Are you ready?

7 Mr. Spieth: If your Honor please, during the noon hour we had an opportunity to examine the Government's Exhibit 1, including carbon copies of two letters, one dated May the 4th, 1937, to the Board in Washington, and one by Mr. Lind under date of April 28th, 1937, to the Board in Washington. We object to those letters being included as part of this record. They are recommendations by the Board as to what action be taken here, and it is reciting the whole situation.

Trial Examiner Ringer: May I see the exhibit with those two letters particularly?

Mr. Spieth: Yes, sir.

(Documents referred to handed to Trial Examiner Ringer.)

Trial Examiner Ringer: What have you to say as to that, Mr. Lodish?

Mr. Lodish: As far as those reports are concerned, they apply only to the R case. There is no provision for such procedure in the C case. The complaint is necessary,

and before a complaint can be brought to issue, a certain amount of information must of necessity be available and be available under oath. That is what a complaint is based on. In an R case all we have is a petition for certification for election and no other pleading. In that particular case the rules and regulations provide, Article Three, Section Three, if it appears to the Board that an investigation shall be instituted, it shall so direct and so forth. Now,
8 of course, it cannot appear to the Board that something should or should not be necessary unless they have some idea as to what the claims of the persons bringing the petition are. In accordance with that we have the following procedure: A petition for an election is filed. We make an investigation sometimes two sides and sometimes more or less one side, under oath, the claims of the party bringing the petition. For example, one individual may come in and say that, "We want an election," not showing that he represents anybody. That, of course, would be denied. Those claims made by the petition are investigated by us and we report to Washington and they thereupon order a hearing. Now, those particular exhibits serve their purpose. They are of no value in this case whatsoever except as a condition precedent. The complaint is not evidence; the answer is not evidence, and those reports are not evidence. It is merely to show that the steps were taken as expected by the Act, and that a charge was filed and a petition was filed, and an answer was filed and so on. Now, it is already in the hands of the Board in Washington, and it has been the reason for calling this hearing. It could not hurt anyone to have it in a second time and it is just in there for that purpose.

Mr. Spieth: We cannot see that that is a fair purpose, your Honor. This complaint has an affidavit purporting to set forth certain facts on which the issuance of the complaint is based. These letters that we are objecting
9 to are the Regional Board Director and his counsel's conclusions, as to why this Board should act. They are prejudging the whole situation, and the recommendations and the statement that certain facts and certain conditions are in existence here. We cannot be bound by any

ex parte statement of that kind. We have no opportunity to meet them, and as far as there being a prerequisite to the issuance of a complaint, the fact that the Board made investigation and recommended that a complaint be issued is sufficient to comply with the Act.

Trial Examiner Ringer: Objection will be overruled.

Mr. Spieth: Exception.

Trial Examiner Ringer: Proceed.

Mr. Spieth: Now, may I inquire as to the affidavits that are attached to the C complaint and the R complaint? The only case that we had an opportunity to file an answer in is the C complaint. We have answered the allegations in the complaint. The affidavit that is attached there is not made a part to anything alse and we have directed no pleading to that and, of course, if it is part of the complaint then the general denial that is included in our answer should apply to the statements that are contained in that affidavit.

Trial Examiner Ringer: It clearly does.

Mr. Spieth: I would like to make that denial broad enough to apply to the affidavits that are included in our complaint.

Trial Examiner Ringer: Your denial goes to the whole proceeding. You may proceed, Mr. Lodish.

Mr. Woodle: I would like the record to show that I request a separation of witnesses on behalf of the complainant.

Trial Examiner Ringer: I have not got the attorneys all straightened out as to whom they represent as yet.

Mr. Woodle: We represent the Machinists, Molders, Federal Labor Union, and so forth, the A. F. of L. Unions.

Trial Examiner Ringer: Any comment on that? By any of the other counsel?

Mr. Lodish: Mr. Examiner, I have uniformly in the past never objected to the segregation of witnesses and I would not at this time except for this one reason: I think there will be during the course of this proceeding a great number of people. It will be uncomfortable for them, for one thing; and, secondly, as far as I can see, and I would like to be corrected if I am wrong, the pleadings in the

case indicate an almost agreed statement of facts. I find it difficult to see any harm in having all of the witnesses present in this particular case. There seems to be almost no disagreement as to the actual facts in the case and I would, therefore, weakly, if you will, object to a segregation. If it is insisted upon, I would not want anybody to think that they are being deprived of any of their rights and I would not press it too much.

Trial Examiner Ringer: The only purpose of segregation of witnesses is the danger of one witness hearing the other witnesses' testimony on matters that both of them are going to testify. Now, I don't know whether there is any serious danger of that in this case with respect to any of the issues. Can you enlighten me as to what issue that might come up in?

Mr. Woodle: Well, the issue that most of these men will testify with respect to membership, with one Union or another involved in these proceedings, and the reason why they held membership in one union or another, and the fact of the matter is that most of the membership were taken at one time under certain circumstances regarding which all of these people will testify to, and we feel that their testimony is more than likely to be uniform, perhaps exactly the same if they are all in the court room and hear testimony of other witnesses.

Trial Examiner Ringer: Under those circumstances, I think there perhaps should be a segregation of witnesses. All witnesses who know themselves to be such please stand and hold up your hands.

Mr. Spieth: I take it, your Honor, that that does not apply to the officers of the Respondent?

Trial Examiner Ringer: Well, of course, each counsel, each group of counsel, are entitled to keep their informative witness with them.

Mr. Lodish: There are two men behind me who may be witnesses in this case but they are both, in a sense, principals; one is the attorney for the C. I. O. Union and the other is the organizer for the C. I. O. Union. Of course, the rule of segregation naturally would not apply to them.

Trial Examiner Ringer: If you will name them to the Reporter, I will permit them to remain in the room.

Mr. Lodish: Mr. Griff remains as counsel and Mr. James Pascoe is the representative of the C. I. O. Union in an official capacity and, as such, is necessary in the conduct of the case.

Trial Examiner Ringer: Does the other counsel or group of counsel wish to except witnesses to remain in the room?

Mr. Spieth: Mr. Wilson, the Vice-President of the Respondent, of course.

Mr. Wachtel: I should like to ask Mr. Gordon, who is Business Representative of the International Association of Machinists, and Mr. Muelhoffer and Mr. Haas, who is the representative of the Molders, and Mr. McWeeney, who is the Representative of the Federal Union.

Trial Examiner Ringer: Each of those is the representative of one of the unions you are interested in?

Mr. Wachtel: And Mr. Madigan of the Pattern Makers.

Trial Examiner Ringer: Each of those requested to be exempted will be permitted to remain in the court room during the hearing.

13 Mr. Griff: Mr. Pascoe represents the United Electrical Radio Workers of America, and on behalf of the specific unit, Local 720 of the International, I request that Howard Lawrence and Edward Koutnik, Vice-President and Secretary-Treasurer respectively, be permitted to remain.

Trial Examiner Ringer: No objections to that. They may be permitted to remain also. The rest of you will be required to absent yourselves from this room until called, remaining in the hall or any other convenient place you can find and be available when requested to come in. Proceed now.

Mr. Lodish: At this time, Mr. Examiner, I should like to present what we term the more or less formal exhibits in the case for the purpose of proving the Board's jurisdiction. I would like to introduce Board's Exhibit 2, which is a photostatic copy of a trademark registered to the Electric Vacuum Cleaner Company, Number 339,980, describing

a certain trademark used by such corporation in commerce among the several states in the Union.

Mr. Spieth: We have admitted that they are engaged in interstate commerce under our answer.

Trial Examiner Ringer: You have no objection to that.

Mr. Spieth: If that is the purpose that it is offered for, we have no objection.

Mr. Lodish: That is the sole purpose.

Trial Examiner Ringer: Admitted.

14 (The papers referred to were received in evidence and marked "Board's Exhibit No. 2.")

Mr. Lodish: Board's Exhibit No. 3 is a mimeographed copy of the Major Issues Involved in Strikes Beginning in 1935, taken from the United States Department of Labor, Bureau of Labor Statistics, Monthly Labor Review, May, 1936, Page 1308, Table Six, entered for the purpose of showing that of the strikes in the United States during the period about forty-seven per cent involved organizational questions such as recognition and recognition and hours and so forth.

Mr. Spring: What possible effect would that have on the issues in this case? We object to the introduction.

Trial Examiner Ringer: It will be overruled. That is universally admitted in this type of hearing.

(The paper referred to was received in evidence and marked "Board's Exhibit No. 3.")

Mr. Spieth: We do not need to take an exception upon the overruling of the objections,

Trial Examiner Ringer: No; you take your exceptions at the time you file any exception to the decision, to the intermediate report of the Trial Examiner, in case it should be against you.

Mr. Lodish: At this time I would like to offer for the record Board's Exhibit No. 4, which is a certified copy, certified by the Secretary of the Department of Labor, showing strikes and lockouts in the Electrical Machin-

15 ery, Apparatus and Supplies Industry, in 1934, and in January to July, inclusive, 1935, showing the major issues involved. This exhibit, Mr. Examiner, is an inau-

guration of the data as to all industry and showing the issues involved in strikes in the electrical machinery industries in particular.

Mr. Spieth: We make the same objection as we did to Exhibit 3.

Trial Examiner Ringer: Overruled.

(The paper referred to was received in evidence and marked "Board's Exhibit No. 4.")

Trial Examiner Ringer: Now, I request you gentlemen to see if any persons whom you know to be witnesses come into the room, I will leave it to you to give them the information about the order of segregation.

Mr. Lodish: I would like to offer for the record Board's Exhibit No. 5, containing five tables taken from the United States Department of Commerce, Bureau of the Census. I would like to say at this time, Mr. Examiner, that the attorneys generally know that statistics of an official part of the Government, United States Department of Commerce, can ordinarily be taken judicial notice of. The purpose of this elaboration is to assist the Trial Examiner and to give him the essence of the statistics. As far as the authenticity is concerned, of course, anybody can compare these with the originals, the original sources which are named at the bottom of each table, giving the date and
16 page and title. Table One shows the rank of Electrical Machinery, Apparatus and Supplies Industry in the United States, showing that in value of products it ranks fourteenth and in number of wage earners it ranks eleventh. Table Two shows the rank of the same in Ohio and the value of products is ranked the fourth and the number of wage earners ranks the fourth. Table Three shows the rank of Ohio in the United States in electrical machinery and so forth industry; Ohio ranks first in value of products and the number of wage earners. Table Four shows the raw materials used in the electrical manufacturing industry and the sources of these raw materials, or the chief ones. Steel seven per cent comes from Illinois and ten per cent from Indiana and so forth. Table Five shows the relation of the population of Ohio to the production of

electrical machinery, apparatus and supplies. I offer these in evidence.

Trial Examiner Ringer: Any objection?

Mr. Spieth: We make the same objection. I cannot see that they are material.

Trial Examiner Ringer: Overruled. Admitted.

(The papers referred to were received in evidence and marked "Board's Exhibit No. 5.")

Mr. Orgill: May I ask a question, Mr. Examiner?

Trial Examiner Ringer: Yes. Off the record.

(Discussion had off record.)

Trial Examiner Ringer: May I ask this, any of the motions that may have been filed before the trial were
17 ruled upon; were they not, Mr. Lodish?

Mr. Lodish: There is just one motion filed and the answer to that motion was an amended complaint. It was not ruled upon. The Regional Attorney took judicial notice of the fact that the motion was proper.

Trial Examiner Ringer: Proceed then.

Mr. Wachtel: Mr. Examiner, Mr. Lodish has stated that these letters referred to in Board's Exhibit No. 1 were a part of the case referred to in the R case?

Trial Examiner Ringer: That is right.

Mr. Wachtel: As representative of the A. F. of L. Unions, I would like to renew the objection to these letters in the record. They affect our position. We never had notice of them to date, and they are merely opinions of the prosecutor in the case and they are legal conclusions.

Trial Examiner Ringer: That will be overruled. They do not have any weight as evidence in this case.

Mr. Orgill: That is, as I understand, they are not introduced in evidence but simply as formal—

Trial Examiner Ringer: I did not state that correctly. They are no evidence in the case as to the facts purported to be stated in the letter. They are admissible as evidence, showing what took place in the proceedings leading up to this hearing.

Mr. Spring: But, your Honor, those communica-
18 tions go much further than that. They are a conclu-

sion of facts of Mr. Lodish's investigation from one side.

Trial Examiner Ringer: My holding as to that is that they are not as evidence of the truth or falsity of those facts. Proceed.

Mr. Lodish: We will call Mr. Wilson.

(Mr. Wilson takes the witness stand.)

Mr. Lodish: Mr. Examiner, I think I would like to state for the record here that the company has been unusually cooperative in its response to this proceeding, filed a very complete answer, offered to produce officers and records, and let this be by way of appreciation and also by way of mentioning that I intend to exploit its cooperation to the utmost to expedite the hearing. Mr. Wilson has been brought pursuant to our request to expedite jurisdictional matters for one thing and to put those matters into evidence, which are outlined in their answer.

R. B. WILSON, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Lodish) State your name, please?

A. R. B. Wilson.

Q. And have you a position with reference to the Electric Vacuum Cleaner Company?

A. I am its Vice-President.

19 Q. What are your duties regarding supervision?

A. Principally salesman.

Q. How long have you been connected with the company?

A. Sixteen years approximately.

Trial Examiner Ringer: What is your address, Mr. Wilson?

The Witness: Home address, 21906 Brently.

Q. (By Mr. Lodish) I would like to ask you a few questions to amplify the answer that your company filed. You admitted in Paragraph Two that the company has branches in important cities in the United States and

Canada. It has been alleged in Paragraph Two of the complaint that branches exist in over a hundred important cities in the United States and Canada. Can you give us your best impression of how many cities you actually have branches in?

A. It is approximately a hundred, sub-branches and branches.

Q. You have admitted in Paragraph Three that the company in the course and conduct of its business purchases and transports raw material and sells and transports manufactured products, as alleged in the complaint. Can you tell me what percentage of the raw material used by your company comes from without the State of Ohio?

A. Yes; between seventy and seventy-five per cent.

Q. And can you tell me what percentage of your finished product goes outside of the State of Ohio?

A. Approximately ninety per cent.

20 Q. Do you have any information as to the rank of your company in this particular industry?

A. I do not.

Q. Do you know the total production in the year 1936 approximately?

A. In units?

Q. Any unit that you care to mention.

A. Something over two hundred thousand units. I presume you do not want anything but an approximation. It is over that.

Q. Now, you have answered that on June 22nd, 1935, you entered into a contract with certain unions. Have you a copy of that contract with you?

A. Yes.

Mr. Spieth: I have the original if you want to examine that. There are a number of copies attached. I would like you to use the copies instead of the original if you will.

Q. (By Mr. Lodish) I now hand you Board's Exhibit 6 and ask you if that is a copy of the contract just referred to?

A. Yes.

Q. It was signed by yourself, representing the employer, and by Muehlhoffer, Gordon, Hass, Jun, and a

blank representing the Federal Labor Union 18907. Was there a representative of that Labor Union there?

A. There was.

Q. Was there any particular reason why that line 21 was not signed?

A. None that I know of. I could not answer you why it was not.

Mr. Lodish: I offer that (referring to Board's Exhibit No. 6).

Trial Examiner Ringer: Off the record.

(Discussion off record.)

Trial Examiner Ringer: Admitted.

(The paper referred to was received in evidence and marked "Board's Exhibit No. 6.")

Q. (By Mr. Lodish) Now, you allege in your answer that a new contract effective as of June 24, 1936, was thereafter negotiated. Do you have a copy of that contract?

A. Yes.

(Document handed to Regional Attorney.)

Q. I now hand you a document marked Board's Exhibit No. 7 and ask you if that is a true copy of the contract just mentioned?

A. It is.

Mr. Lodish: I now offer Board's Exhibit No. 7.

Trial Examiner Ringer: Admitted.

(The paper referred to was received in evidence and marked "Board's Exhibit No. 7.")

Q. (By Mr. Lodish) You allege that on March 20th, 1937, a communication was received by you from the American Federation of Labor, asking you to temporarily 22 close your plant. You have a copy of that communication?

A. Yes.

(Document handed to Regional Attorney.)

Q. I will read the document just handed to me by your counsel and ask you whether that is the document you refer to in your answer: Dated March 20th, 1937, "to the Electric Vacuum Cleaner Company: Gentlemen: As the bar-

gaining agent for your employees, we request you to temporarily close your plant, pending present negotiations with you relative to matters covered by our contract with you. Very truly yours," Thomas A. Lenahan, Secretary Cleveland Federation of Labor Committee; R. G. Gordon, Machinists; George A. McKinnon, Metal Trades Council Secretary; Frank P. Converse Local 589 International Union of Operating Engineers, John Toth, Junior, International Association of Machinists, and Ray Muehlhoffer, Metal Polishers Local No. 3; Frank Ledasil, Federal Labor Union 18907, and W. C. Magee, International Association of Machinists, and ask you whether that is the communication just referred to?

A. Yes.

Q. And did you, in accordance therewith publish in the Cleveland newspapers a notice, which said notice is quoted in your answer?

A. We did.

(Discussion off Record.)

23 Q. I now hand you what is apparently a newspaper clipping, marked Board's Exhibit No. 8, and ask you whether this is a copy of the various newspaper advertisements that you refer to?

A. That's right.

Mr. Lodish: Off the record.

(Discussion off record.)

Mr. Lodish: I now offer Board's Exhibit 8.

Trial Examiner Ringer: Admitted.

(The paper referred to was received in evidence and marked "Board's Exhibit No. 8.")

Q. (By Mr. Lodish) You allege that thereafter an agreement was drawn up, a copy of which is attached to the answer and identified as Exhibit?

A. Yes.

(Document handed to Regional Attorney.)

Q. I now hand you a printed copy of an agreement identified as Board's Exhibit No. 9 and ask you whether that is a true copy of the contract referred to?

A. Yes; it is.

Q. This agreement, Mr. Wilson, is blank as to date. You have alleged that the same was executed by the parties on May the 20th, 1937; is that the correct date as to this agreement?

A. The effective date I do not recall. Have you got the original (addressing Mr. Spieth)?

Mr. Spieth: Yes.

24 (Mr. Spieth hands document to Regional Attorney.)

Q. (By Mr. Lodish) I understand, Mr. Wilson, that Board's Exhibit No. 9 contains blanks for dates and signatures, is a copy of what might be termed a master agreement executed on May 20th, 1937?

A. I don't know what you mean by master agreement.

Q. I now hand you Board's Exhibit No. 10 and ask you whether or not that is a true copy of the original agreement executed May 20th, 1937, and which you had reference to in your answer and your testimony?

A. That's right.

Q. Then Board's Exhibit No. 9 is apparently one of many printed copies of that same agreement?

A. That's right.

Q. And what is the purpose of Board's Exhibit No. 9, do you know?

A. I do not.

Mr. Lodish: I offer these exhibits (referring to Board's Exhibits Nos. 9 and 10.)

Trial Examiner Ringer: Both are admitted.

(The papers referred to were received in evidence and marked "Board's Exhibits Nos. 9 and 10.")

Q. (By Mr. Lodish) Now, you admit in your answer, Mr. Wilson, that the C. I. O. Union subsequent to March 19th, made claim a majority of the respondent's em-

25 ployees have resigned their membership and demand the right to negotiate a settlement of any grievances. When and how was such a claim made to you?

A. I received a letter, the original of which I have here, dated April 2nd, making such claims, a registered letter.

Q. Do you have that letter with you?

A. I have.

Q. May I see it, please?

(Document handed to Regional Attorney.)

Q. Acknowledging that you have handed me what is apparently the original of a letter that you testified to, I would like to hand you Board's Exhibit 11 and ask you whether that is a true copy of the original letter?

A. It is.

Mr. Lodish: I now offer Board's Exhibit No. 11.

Trial Examiner Ringer: Admitted.

(The document referred to was received in evidence and marked "Board's Exhibit No. 11.")

Q. (By Mr. Lodish) Did you receive that letter, Mr. Wilson?

A. Personally, I did, yes. It was received in our mail.

Q. Can you state the form of delivery of that letter?

A. Special delivery, registered, receipt requested.

Q. Do you know when it was received by your company?

A. Yes; April 5th at seven fifteen a. m.

Q. Now, April the 5th is shown by a company stamp?

A. Yes.

26 Q. That was Monday morning?

A. That's right.

Q. The postmark here indicates that it was mailed April the 2nd and should have been received by your company April the 23rd, Saturday?

A. Our office was closed April the 3rd, Saturday; there was no one there.

Q. So that, as far as your knowledge is concerned, it was mailed April 2nd, scheduled to be received April 3rd, and actually received April the 5th because of the fact that your factory closed Saturday?

A. That's right.

Q. To make this record complete, do you remember when you personally got that letter?

A. I saw it as soon as I got to the office Monday morning; knew nothing of it until that time.

Q. And that was about what time?

A. I don't recall what time I got in that morning.

Q. And did you answer that letter?

A. No, sir.

Q. Is it fair to say that you did nothing about it?

A. We referred it to counsel.

Q. Now, it will become material during the course of this proceedings to compare lists with your payroll records. Have you brought in your payroll records with you?

27 A. Yes.

(Documents handed to Regional Attorney.)

Trial Examiner Ringer: We will take a five-minute recess at this time.

(Short recess.)

Q. (By Mr. Lodish) I hand you what has been marked Board's Exhibit No. 12 and ask you if that is?

A. That is our payroll.

Q. As of what date?

A. For the period between July 12 and July 25th, 1935.

Q. That is your original payroll record?

A. Yes.

Q. And that shows the employees your company had during the first dates that we have discussed in your answer, namely July—we were interested in June 22nd, 1935, and this is a payroll between July the 12th, 1935. Are you able to state now whether there was any material difference between the payroll of the time including June 22nd, 1935, and this payroll of July the 12st?

A. There was no material difference. There might have been some difference in any payroll, but no more than normal.

Q. To the best of your recollection, the payroll of that date would include almost the same names and the same numbers?

A. I would think so.

Mr. Spieth: Off the record.

28 (Discussion off record.)

Q. (By Mr. Lodish) Now, referring to Board's Exhibit No. 12, can you state whether there are any supervisors on that payroll?

A. As I understand it, that is only those on hourly rates and no foremen on there.

Q. Just production and maintenance people on an hourly rate?

A. That is right.

Q. And does that include all of the production and maintenance employees on an hourly rate for that particular period?

A. Yes, it does.

Q. I note that the exhibit contains certain figures that we are not interested in; it contains names which we are interested in, and it apparently contains the clock number or something of that kind which we are interested in, and it does not contain the position of the persons which we are interested in. I mean by that that the record should show which are machinists and which are polishers and so forth; would it be possible for you in substituting a copy for that original to show on the copy the names, the payroll number, and the specific occupation of those individuals?

A. I think so. Those clock numbers are keyed so that we can tell what department anybody is in. Would that help you?

Q. Yes.

A. I could not tell you that now. I would have to refer to the cost clerk.

Mr. Lodish: Then it is stipulated, Mr. Spieth, that you will supply copies, because, of course, you want the original, with that information on?

Mr. Spieth: Yes; we will supply copies showing the names and the clock numbers and show that numbers starting at such and such are the Polishing Department and we will give you a key to the clock numbers.

Q. (By Mr. Lodish) I hand you Board's Exhibit No. 13 and ask you what that is?

A. That is our payroll for the period of June 12, 1936, to June 25, 1936.

Q. And the questions asked about the payroll known as Exhibit 12 would be the same in substance for Exhibit No. 12 as to contents and make-up?

A. Right.

Q. I will now hand you Board's Exhibit No. 14 and ask you what that is?

A. This is payroll, factory payroll period from March 5, 1937, to March 19, 1937.

Q. And the same is true of this payroll?

A. It is.

Q. You stated in your answer that the plant was closed from March 22nd to April 5; is that correct?

A. Yes, sir; I believe those are the dates, 22nd to April 1st.

30 Q. That is, the plant re-opened April 5th, Monday?

A. That's right.

Q. What was the last day of operation? Was it on a Friday?

A. It was Friday the 19th I think it was.

Q. Friday, March 19th?

A. Yes.

Q. So that this payroll represents the employees who were employed by your company at the day of closing?

A. I have already forgotten the date that you read off.

Q. Exhibit 14?

A. Yes; March the 19th.

Q. Now, I have glanced at this, Mr. Wilson, and in an approximate way there are about nine hundred and twenty-five names on this list; do you know the exact number?

A. I do not. It is in the neighborhood of nine hundred.

Q. About nine hundred twenty-five sounds correct?

A. It sounds a little bit high to me. I think there is under nine hundred at that date.

Q. At any rate, the exhibit speaks for itself?

A. Yes.

Q. And a number of names on that exhibit are all of the maintenance employees on an hourly basis that were working at the time the plant closed?

A. Right.

Mr. Lodish: Now, it is agreed, Mr. Spieth, is it,

31 that we will permit the substitution of copies for those originals under the stipulation just made?

Mr. Spieth: Copies of only part of the original exhibits that you are offering, the names and clock numbers.

Mr. Lodish: And some designation to show what the positions were.

Trial Examiner Ringer: Are you offering them now or later?

Mr. Lodish: I will offer them (referring to Board's Exhibits Nos. 12, 13 and 14).

Mr. Spieth: Well, I would suggest, if I can, that you permit these to be marked and that you do not offer these but offer the copies.

Trial Examiner Ringer: That will be understood. They are admitted and marked by the Reporter, and they will be off our minds; Exhibits 12, 13 and 14 for the Board will be admitted.

(The papers referred to were received in evidence and marked "Board's Exhibits Nos. 12, 13 and 14," it having been stipulated that copies may be substituted in lieu of the originals.)

Q. (By Mr. Lodish) You state in your answer, Paragraph Fifteen, that about June 22, 1935, there were a total of eight hundred and one employees, to the best of your knowledge; is that the correct figure for the production and maintenance employees on an hourly basis at that time?

32 A. Yes.

Q. And then you state that about June 24th, 1936, or thereabouts, the total number of production employees and maintenance employees were eight hundred and eleven?

A. That's right.

Q. Now, you have nothing in the answer showing the number of employees the date of the closing, and that will be supplied for the record by the copy, which is approximately a little over nine hundred?

A. Whatever the payroll shows. I think it was a little under nine hundred.

Q. You state in your answer that on about May 20th, 1937, you had one thousand and thirty-two employees and that also referred to all production and maintenance employees?

A. Right.

Q. On an hourly basis?

A. Yes.

Mr. Lodish: Mr. Examiner, Mr. Spieth said something earlier in the proceeding about his being confused because of the joinder of the C and R cases. I have given the matter some thought and I believe that he might be a little bit prejudiced and some difficulty might arise unless we straighten out that matter of joinder. Now, I suggest this: That we proceed along the C case to its conclusion. The reason I suggest that is this: In the first place, all
33 parties present are interested in that case either directly or indirectly. It will eliminate any confusion on the part of counsel for the respondent. We can forget all about the R case for the time being, and when we are through with the C case, we will have very little for the R case. There will be maybe a question of appropriate units or some few questions that are specifically concerned with the R case, but I think it will obviate the matter and eliminate a great deal of confusion.

Trial Examiner Ringer: I think it is a very splendid suggestion because there is a certain element of confusion already there. Counsel for the unions, of course, have not intervened, as I understand it, in the C case.

Mr. Lodish: Well, I should like to invite various counsel for the A. F. of L. to intervene in the C case if they so desire, without requiring them to go into any formalities.

Mr. Woodle: If the Court desires, we have prepared a motion for intervention. If the Court desires such a motion, we have a formal motion prepared.

Trial Examiner Ringer: That is entirely up to you, whether you wish to file it or not.

Mr. Lodish: No objection by the Board.

Trial Examiner Ringer: Let the record show the filing of the motion by Metal Polishers International Union No. 3 and International Association of Machinists, District No. 54, International Molders Union of North America No.
34 420, and Federal Labor Union No. 18907, each to intervene in Case No. VIII-C-73 and in Case No. VIII-R-15.

Mr. Wachtel: May we add that the Pattern Makers

have been included in the motion and they decided to join.

Trial Examiner Ringer: You can make an oral motion as soon as I rule on this one. Any objection by any of the other counsel?

Mr. Lodish: No objection.

Mr. Griff: No objection on the part of the United Electrical and Radio Workers.

Trial Examiner Ringer: The motion is sustained as to each of the petitioners' and each is permitted to intervene in each of the said causes.

Mr. Lodish: Mr. Examiner, I should like permission to incorporate the motion for intervention in Board's Exhibit No. 1.

Trial Examiner Ringer: Granted. Now, your oral motion.

Mr. Wachtel: We ask permission to amend this motion to include the Pattern Makers' Association of Cleveland and Vicinity in this motion for intervention in the C case.

Trial Examiner Ringer: Off the record.

(Discussion off record.)

Mr. Wachtel: I make a motion in behalf of the Pattern Makers' Association of Cleveland and Vicinity, to intervene in this case in the VIII-C-73 case.

35 Trial Examiner Ringer: That will be granted.

Mr. Orgill: On behalf of the Cleveland Federation, we will accept the invitation and ask permission to intervene.

Trial Examiner Ringer: Granted.

Mr. Woodle: I am told, if your Honor please, that the designation of the International Molders Union of North America No. 420 should be No. 430.

Trial Examiner Ringer: It should be corrected to 430 instead of 420. Now, as I understand it, then, the plan of procedure is to go ahead on the C case with permission for any of the counsel to make any objections to the admissibility of any evidence that might later be sought to be used in the R case. That will be proper, Mr. Lodish, because when we finish with the case we will want to use that same evidence in the R case and it will be rather late then to take it out and make any objection. I think that will be the

proper way to handle that. Now, it is agreed by all counsel that the evidence that we have heard up to this point will at this stage be considered as the C case.

Mr. Lodish: And further stipulated that all evidence gathered throughout this hearing which is material and relevant to the R case will be a part of the R case.

Trial Examiner Ringer: Proceed.

Mr. Lodish: While we are clearing the ground, there is one other comment I would like to make. There has
36 been a great deal of objection on the part of all counsel to certain reports made by the Regional Board, the home office. I have stated for the record, I believe, that the sole purpose of those reports were to show that certain conditions precedent were performed by the office. They have no value whatsoever in the slightest as evidence or as conclusions or even as opinions of the Board or the Regional office, merely being statements of the prima facie case made by the persons bringing the charges and the petition. Further to eliminate any misunderstanding, I shall ask permission of you and of the Board to reverse the ruling and to have those withdrawn from the record if they are not necessary as a part of the conditions precedent.

Trial Examiner Ringer: There certainly cannot be any objection to that, I assume, on the part of any counsel other than the Regional Attorney. I will sustain the motion. Now that refers to the letters originally made a part of the Board's Exhibit No. 1. Have we cleared the ground sufficiently now to go ahead?

Q. (By Mr. Lodish) You testified that your function was in connection with sales. Now I would like to ask you who in your company is in direct charge of labor unions?

A. There is no such person designated in our company.

Q. Who in your company is the proper person for making contracts with labor organizations?

A. Either the President or myself. I said I was
37 principally interested in sales and that perhaps gave you the wrong impression. I spend most of my time on that, but I am Executive Vice-President and have something to do with all matters.

Q. I believe the record shows or will show before it is

through that any contracts that were signed with labor organizations were signed either by you or Mr. Tuteur, who is the President, or both?

A. That is right.

Q. What is his full name, the full name of the President of the company?

A. Mr. Julius Tuteur.

Q. Is there any other Tuteur in the company?

A. There is.

Q. What is his name and what does he do?

A. John Tuteur. He has no official title. He is virtually the assistant to the President.

Q. So that when you talk about Mr. Tuteur from now on, we will be referring to the President and the older man?

A. Yes.

Q. Now, there is a denial in the answer that the company is not informed as to whether or not the United Electrical and Radio Workers, Local 720, is a labor organization within the meaning of Section Two, Subdivision Five, of the National Labor Relations Act. You were advised
38 by a letter that said Local 720, United Electrical and Radio Workers, Board's Exhibit No. 11, wishes to engage in negotiations with you. Now I ask you then, Mr. Wilson, whether that did not sufficiently advise you that this group purported to be a labor organization within the meaning of the Act?

A. They purported to be, yes.

Mr. Lodish: Off the record.

(Discussion off record.)

Mr. Lodish: I am informed that the United Electrical and Radio Workers, Local 720, was formed at about March 17, 1937.

Trial Examiner Ringer: Has it been stipulated by all concerned?

Mr. Spieth: I suppose they have a charter or something to show that date. If we can see that, that is all we are interested in.

Trial Examiner Ringer: Do you want to say something?

Mr. Wachtel: If there is a charter present, we would

like to see it.

Mr. Griff: Your Honor, a charter was issued and the charter is—we have not the physical charter here, but we will have it here in due time, but a charter was issued as of March 17th by the International Union of the United Electrical and Radio Workers of America, designating this particular unit as Local No. 720.

Trial Examiner Ringer: What I am interested in
39 now is are all of you parties willing to stipulate that the United Electrical and Radio Workers, Local 720, is a labor organization?

Mr. Orgill: Frankly, Your Honor, I don't know whether they are or not.

Mr. Lodish: Mr. Examiner, I was trying to save time, not to prolong it, so we will just drop it here and we will put it on as part of the case with charters and constitution and whatever is necessary.

Q. (By Mr. Lodish) In your answer you say that the C. I. O. Union at various times subsequent to March 19th made claims that a majority of the Respondent's employees have resigned their membership and so forth. Now it is in the record that you testified in support of that that you received a letter dated April the 2nd, in substance containing the allegations of your answer. Now, were there any other times besides that, to your knowledge, when the C. I. O. Union claimed a majority?

A. They did not to me.

Q. So that your answer at various times was merely repeating the complaint, making the date general. As far as you know, it was just that one date?

A. That's right.

Q. I want to get to Paragraph Nine of your answer in which you deny that the company on the 6th day of March, 1937, and at various times thereafter committed cer-
40 tain acts complained about. Now, did you have occasion during that period, which roughly begins with about March 1st, to consult with any of your employees regarding their affiliations?

A. I did not.

Q. Did you have occasion during the month of March

to suggest to your employees that they join any particular union?

A. I did not.

Q. Were you present during that month when various business agents were soliciting membership among your employees?

A. I was not.

Q. So that your answer then is this: That during the month of March you had no knowledge other than hearsay, perhaps, no personal knowledge of the solicitation of membership among your employees by either the A. F. of L. or the C. I. O.?

A. I don't quite follow you. I know that there were members of the American Federation of Labor within our plant during the entire period of our contract with them. I presume they were soliciting members in there, yes. I don't know one way or the other, but they had access to our plant.

Q. Your answer is that they might have been there frequently because they had access to your plant?

A. That's right.

Q. But my question is this: Was any solicitation of members made in your presence?

A. No.

41 Q. During the month of March, 1937?

A. No.

Q. In your office?

A. Solicitation of membership?

Q. Yes; for the A. F. of L. or C. I. O.?

A. No.

Q. Have you ever suggested to any of your employees which union they should join, if any?

A. No, sir.

Q. Now, in Paragraph Ten you deny a refusal to reinstate about five hundred and fifty employees but say that all of the employees were called to return to work about April the 5th. Now, can you tell us what the mechanics of your calling your employees back to work was? What did you do? How did you do it?

A. Published a notice in the newspaper for them to

return.

Q. And that notice is now in evidence?

A. Yes.

Q. In spite of the fact that it signed by Julius Tuteur, you are as well acquainted with this as if you had signed it yourself?

A. Yes.

Q. And this notice recites that only those employees who are members of the crafts under contract with us will be employed, and that is in accordance with your
42 answer that you refused to employ anybody but A. F. of L. men at that time?

A. That's right.

Q. Now, on Monday morning, April the 5th, when I presume a great many men attempted to work, did any of these men contact you with reference to their return to work?

A. On the 5th I think not. One or two men contacted me about getting their tools out of there.

Q. On what date?

A. I take it back. There were one or two men who did see me. I was called to the door and asked about returning to work, and I said it will be necessary for them to get a slip to get into the plant.

Q. And that is an A. F. of L. slip?

A. That's right; that was our agreement.

Q. So that some men did attempt to return to work and how many I presume you have no way of knowing?

A. No.

Q. But could not get back to work because they did not have A. F. of L. membership?

A. On that particular day.

Q. What did you say to these one or two people who asked you about returning back to work?

A. It will be necessary for them to contact the American Federation of Labor representatives to get admission cards.

Q. Did you give them any further advice than that?

43 A. None whatsoever.

Q. You made no attempt one way or another regarding their membership in the union?

A. We did not.

Q. Now, you state in your answer that the three particular dates where contracts were made with the American Federation of Labor that they purported to represent the majority of your employees. Now, did they make any such offer of proof to you?

A. Yes.

Q. And what was that offer of proof?

A. Signed cards.

Q. And what did you do in connection with the offer of signed cards?

A. Checked those cards against the payroll before we signed the contract.

Q. So that you personally were satisfied they represented the majority?

A. Yes, sir.

Q. That is on June 22nd, 1935?

A. Yes.

Q. And on July the 6th, 1936, and on or about May 20th, 1937?

A. Yes.

Q. And, in fact, it was your belief at that time that the A. F. of L. in 1935 represented six hundred and ten of your eight hundred and one employees?

A. Yes.

Q. And in 1936 represented seven hundred and seventy-one of your eight hundred and eleven employees?

A. Yes.

Q. And in May they represented nine hundred and seven of your one thousand and thirty-two employees?

A. Yes.

Q. Now, you state in your answer on the top of Page Six that after complying with the notice to close the plant, you had numerous meetings with the American Federation of Labor Unions, discussing various matters and then reopened the plant with this notice that has been testified to. Now, can you give us any more definite information as to the number of meetings that you had during that period be-

tween March 19th and April the 5th?

A. As I recall it, there were only two.

Q. Those that you were present at?

A. Yes.

Q. What were the dates of those two?

A. I couldn't tell you that. They were in between the closing of the plant and the re-opening of it.

Q. Let us see if we can refresh your recollection. The last day the plant was open was Friday, March 19th?

45 A. Yes.

Q. Do you remember how soon after that that meeting was?

A. Yes; on March the 20th.

Q. That Saturday, March the 20th?

A. Yes.

Q. What time of the day, in the morning, afternoon, or evening?

A. Latter part of the afternoon.

Q. And who was present at that meeting?

A. There was present for the company: Mr. Tuteur and myself and Mr. Spieth and Mr. Spring was there, if I recall, and seven or eight representatives of the American Federation of Labor, all of whose names I could not now tell you.

Q. I presume that they were, in the main, the gentlemen that had been referred to thus far?

A. That's right.

Q. Was Ralph Gordon there?

A. Yes, sir.

Q. Ray Muehlhoffer?

A. Yes. I say Ralph Gordon was there, but I couldn't swear to that; that's my recollection that he was.

Q. At any rate, this was the meeting of the representatives of the various A. F. of L. groups?

A. That's right.

Q. And the company by its President and Vice-

46 President and company counsel?

A. That's right.

Q. Where was this meeting, by the way?

A. In Mr. Spieth's office.

Q. When was the second one? Now, having in mind that the plant was opened Monday, April the 5th?

A. It was in that week. There was nothing between the Saturday meeting and Wednesday and Thursday of the following week.

Q. Now, were these same parties present at the second meeting that attended the first meeting?

A. Substantially so. There was some difference.

Q. Any other people; any outsiders?

A. No.

Q. Now, very briefly, what was the substance of those meetings?

A. The first meeting on Saturday was called, we were asked to meet with the various representatives of the American Federation of Labor, and the announcement was contained in the paper just pretty nearly tells the story, they asked us to close our plant while they might go over the situation and get their lines in order, and we had nothing to do but agree with them.

Q. Now, this meeting apparently then on March 20th resulted in the letter that was read into the record?

47 A. Which letter?

Q. That is dated March the 20th, the letter that was referred to in the notice?

A. The notice in the paper, yes.

Q. What was the substance of the second meeting?

A. It was to get a report as to the progress of the affairs, to get an idea as to when we might expect our plant to open up again.

Q. Do you have any idea, of your own knowledge, and of your experience with matters in the plant, as to what led to the request to close the plant?

A. No, I don't; other than very obviously there was a group within the plant that was causing the dissension within the ranks, and we did not know what it consisted of. We were very much in the dark. I speak for the management particularly. We had nothing to do but take the advice of those who were handling the situation that it required the closing of the plant to find out just exactly where we stood.

Q. In other words, you do know that there was some confusion about representation and your company was in the middle; is that the essence of your answer?

A. Well, I wouldn't say that we considered we were in the middle; we did not consider that there was any great proportion. We knew there was a group that was trying, as reported to us at least, to proselyte members of another organization with whom we had a contract, and that was mere hearsay on our part.

Q. I will ask you again—I asked you once before—because it is of particular interest to us, and that is whether you have ever suggested to anybody that they join any particular union?

A. No, sir; I have not.

Q. Have any of your employees ever asked you for advice regarding whether they should join any particular union?

A. Will you state that again, please?

Q. Have any of your employees, as far as your recollection serves you, come to you and asked what they should do about affiliations with unions?

A. No; I don't recall of any such thing.

(Short recess.)

Mr. Lodish: At this time, Mr. Examiner, I have no further questions of Mr. Wilson and I will turn him over to other counsel for cross-examination.

Mr. Spring: What do you mean, cross-examination?

Trial Examiner Ringer: Of course, this is a witness for the Board, called by the Board; therefore, the other counsel have a right to clear up or amplify or straighten out anything, any matters which have gone into by the Board's attorney before this witness is dismissed.

Mr. Spring: Does that apply, your Honor, to the complainant's witnesses, as well as the Board's witness?

Trial Examiner Ringer: Of course, he is the witness of the Board. In a proceeding of this sort, which is brought by the National Labor Relations Board and the Board is the complainant and the rest of the persons here are interveners, except, of course, the Respondent. Now the policy that I follow has been to give the Union or the

group which presented the charge on which the Board brought the complaint the next opportunity to bring out anything and then the Respondent and then any other interested union. I will follow that, if that is satisfactory to you gentlemen. Mr. Griff, have you any questions?

Mr. Griff: Yes; I would like to ask a few questions of Mr. Wilson.

Trial Examiner Ringer: I have no objection to your sitting down if you wish to.

Cross-examination

Q. (By Mr. Griff) I would like to go back just a little before June of 1935, before the company entered into a contract with the various unions of the Federation. Now, isn't it a fact that there was a union by the name of Mechanical Educational Society who had members working in your plant previous to June, 1935?

Mr. Spieth: I object to that. There is no issue here of the Mechanical Educational Society.

Trial Examiner Ringer: What connection do you
50 expect to make on that, Mr. Griff?

Mr. Griff: I expect to connect it up in this way, your Honor; that the first contract which was introduced in this record, that that contract was not entered into in good faith, and the situation that we are confronted with at this time is as a result of that first contract that was entered into by the company and the various Locals, and I more or less go into that as preliminary and the basis and background and expect to connect it up with the present trouble and to show that it was an outcome of the first skirmish that the company had with a labor organization, and I am not here to establish my rights for or on behalf of the Mechanics Educational Society.

Trial Examiner Ringer: What do you say to that?

Mr. Spieth: I don't think it has any bearing, your Honor. This is a proceeding brought by the Board, and at the time this first contract was entered into, as a matter of fact, it was before the Wagner Act was passed, and we cannot see that it would have any bearing here. We are not operating under that contract. That contract expired

by its own terms, and the second contract was entered into, and this difficulty occurred during the term of the second contract.

Trial Examiner Ringer: There certainly is no issue here of domination of the other unions that I can see.

Mr. Griff: Your Honor, I would just like to be
51 heard in one respect. In acquainting myself with the procedure that this Board has set in these various cases, I ran across the following, I just cannot place my finger on it, but in substance the rule says this: That in all these hearings the rules of evidence pertaining to procedure both in equity and law shall not govern these proceedings; in other words, it was the intent of this Act to give as broad interpretation, and I would appreciate it if you will withhold your objection until after I have had an opportunity to ask the witness some questions, and then if your Honor finds that my questions are not relevant to the issue, at that time I believe your Honor can probably so rule. I expect to connect up a very important issue out of this contract, this first contract, and that is part of this case that came into being.

Trial Examiner Ringer: What is your view on that, Mr. Lodish? That is a rather unusual situation.

Mr. Lodish: Mr. Examiner, of course there are limits to everything. I suppose the purpose and attempt made to go back far into the history might be objectionable. However, there is a contract in evidence dated June 22nd, 1922, and I presume that it is not going too far or explain the circumstances of that contract.

Trial Examiner Ringer: This dates back to when?

Mr. Griff: It dates back to April 1935.

Trial Examiner Ringer: I will overrule the ob-
52 jection for the present.

Mr. Griff: The rule that I have reference to is Section—

Trial Examiner Ringer: I am familiar with the rule. That rule does not mean that you are unlimited in the matter of materiality and relevancy. That is the point I have in mind. I will overrule it for the present and I will permit you to go into it. I may stop you any moment

if I think it is going too far.

Q. (By Mr. Griff) Isn't it a fact that your plant was shut down by reason of a strike from April until June of 1935?

Mr. Speith: I would like my objections to show to this line of examination, your Honor.

Trial Examiner Ringer: You have made one objection and I will overrule it, and that will carry the point, of course.

A. I don't remember the date; in the spring of 1935 there was.

Q. (By Mr. Griff) In the spring of 1935 your plant was shut down by reason of a strike?

A. Yes, sir.

Q. Is it a further fact that that strike was then conducted by a labor organization known as Mechanics Educational Society?

A. Yes.

Q. Referred to as the MESA?

A. That's right.

53 Q. And that was a bitterly fought strike?

M. Orgill: We object to that.

Trial Examiner Ringer: Overruled.

Q. (By Mr. Griff) Isn't it a fact that there were arrests made on the picket line?

A. There was an arrest made, I know of one.

Q. And isn't it a fact that during the time that this strike was in progress that shortly after you entered into a contract with these various Locals of the American Federation of Labor?

A. That's true.

Q. Now, you testified that at the time that you entered into the contract of 1935 that a majority of your employees were members of the various Locals of the Federation?

A. Yes, sir.

Q. Before you entered into that contract, did you know how many of your employees were then members of the various Locals of the American Federation of Labor?

A. Absolutely.

Q. When did you first ascertain that fact?

A. The day that we entered into the contract.

Q. In other words, simultaneously with the date that you ascertained who had a majority, you entered into a contract?

A. That's right.

Q. And how many did you have employed at your plant at that time?

54 Mr. Spieth: Well, that has been testified to.

Trial Examiner Ringer: Sustain the objection. That is all in the record.

Q. (By Mr. Griff) And did you ascertain to what labor organizations the minority belong to?

A. We did not.

Q. What means did you have at hand to ascertain who were members of the Federation?

Mr. Springer: I object. That has all been testified to.

Trial Examiner Ringer: Overruled.

A. Signed cards by those employees.

Q. (By Mr. Griff) Who presented you with that evidence, that proof?

A. The representatives of the various unions involved.

Q. And to whom did they present that evidence?

A. Me.

Q. Where did that take place?

A. At the office of the Chief of Police of East Cleveland.

Q. What is his name?

A. Chief Corlett.

Q. That was as of June 22nd, 1935; is that right?

A. I couldn't tell you the date.

Q. Well, the date when the contract was entered into?

A. That's right.

Q. It is rather an unusual place for drawing a

55 contract, Mr. Wilson?

Mr. Orgill: Are you making a statement or testifying? I object.

Mr. Griff: I have not asked a question, as yet.

Q. (By Mr. Griff) Can you tell us now—

Mr. Orgill: Wait a minute. Let us have a ruling on that.

Trial Examiner Ringer: Are you withdrawing your question?

Mr. Griff: I will withdraw it.

Q. (By Mr. Griff) Can you tell us how you happened to meet with the Chief of Police to draw a contract with your employees?

Mr. Speith: I object. My previous objection still holds.

Trial Examiner Ringer: Overruled.

A. The Chief of Police, in a frie dly manner, acted as intermediary between the employees and the union and the company and I consider it a very appropriate place.

Q. (By Mr. Griff) Did he call you, Mr. Wilson?

A. As I recall, he did; yes, sir.

Q. You got to the Chief's office and who else was there?

A. Mr. Spieth.

Q. Mr. Spieth?

A. No; he went with me.

Q. Who else was there besides the Chief of Police and yourself?

Mr. Speith: I object. He does not say that the
56 Chief of Police was there.

Trial Examiner Ringer: I am going to sustain the objection. I don't believe we are getting anywhere along that particular line. I will sustain the objection.

Q. (By Mr. Griff) Let me ask you this: When you got there, who participated in the drawing of this contract?

A. The signatures are on the contract.

Q. I mean these terms of employment, hours and wages, hours and conditions of employment, who participated?

A. The union representatives and ourselves.

Q. And at that time they presented you with evidence that they represented the majority; did they?

A. Yes.

Q. And how did you know they represented the majority?

Mr. Speith: I object, your Honor.

Trial Examiner Ringer: Overruled.

A. Repeat the question.

Q. (By Mr. Griff) How did you know that they represented the majority at that time in the Chief's office?

A. They had the cards as already in evidence, the number I do not recall again, roughly six hundred and eighty-five, something of that sort.

Q. You checked that against the payroll records; is that correct?

A. Yes.

57 Q. Well, how did you know to bring your payroll records to the Chief's office?

Mr. Speith: Oh, I object. He has not said that he brought the payroll records there.

Trial Examiner Ringer: Objection sustained. Now, if you have any evidence that you want to present, directly going to the point, showing that these were invalid, I will hear it; but I think it is too remote to go into all the details, not at this stage.

Mr. Griff: I would like to be heard in that respect. We have two contracts here, one dated as of 1936 and one as of 1935, and with one insignificant exception they are identical. In view of the fact that the first contract was obtained under what I call unusual circumstances in a Chief of Police office, I believe it is very competent for this Board to know the facts as to how these various things came about, because this is the basis of this contract and one of the very pertinent parts of this lawsuit.

Trial Examiner Ringer: I will sustain the objection. It seems to me that we have gotten in enough on that now.

Q. (By Mr. Griff) Well now, going to 1935, when your company was operating under this contract, directing your attention to the part where it says: "which Local or Federal Unions, the Employer recognizes as the duly chosen agents for collective bargaining for its em-

58 ployees during the term of this agreement provided that said Unions represent the majority of said Employees." Will you tell me what significance you attach to that particular condition of your contract?

Mr. Speith: I object. The contract speaks for itself. The testimony has been that the contract was made under that provisions with the unions who were parties to the contract representing a majority of the employees, and that provision speaks right along that line. Before the company made the contract, it was with the provision at that time that the unions represented the majority of the employees.

Mr. Orgill: There is some other ground that it is an opinion of the witness.

Trial Examiner Ringer: There may be some ambiguity of meaning. I will let him answer that. Overrule the objections.

A. Why the very definite understanding was that before the contract could be signed that evidence satisfactory to us would be submitted that there was a majority of our employees who had designated these unions as their bargaining agent before we would sign it, and having signed it that contract held for the life of the contract and bound those individuals to it.

Q. (By Mr. Griff) When you saw the cards representing the majority of your employees, did you personally examine those cards?

A. I did not.

59 Q. Did anybody for your company?

A. Yes.

Q. Who did?

A. Our payroll man in charge of our payroll.

Q. Did you have a card or some other paper with the signature of the employees to compare as against these?

A. I could not answer whether he compared each signature, but we accepted them in good faith as not forgeries.

Q. There is another stipulation in your contract I want to bring out, that is in Article Four, Section B: "No grievances shall be carried to the point where cessation of work takes place, either on voluntary act of the employees or order of the company, but any dispute over matters not covered by this contract, the dispute shall be

carried through to conciliation by the parties involved." That was desirable by the company; was it not, Mr. Wilson?

A. Desirable?

Q. Yes.

A. It was desirable. You mean by that to infer that we had asked for that?

Q. Yes.

A. I do not recall from which side that originated. It was desired, I presume, by both sides.

Q. In your answer, you stipulated whereby you made certain provisions for such employees that did not
60 become members of the majority; is that a fact?

A. I am just a little hard of hearing. I did not hear the first part of your question.

Q. I say when you signed this first agreement with the five A. F. of L. Unions, there was I am saying a minority group?

A. Yes.

Q. That did not sign with the majority, and there was some provision made for them; isn't that a fact?

A. That's right.

Q. What was that provision?

A. To the effect that the old employees would not be required to join the union.

Q. Do I gather from your answer that the old employees did not join with the Federation?

A. Old employees did.

Q. But it is a fact that a distinct group of employees did not join with the majority?

A. I would not call them a group. I would say there were some employees in our plant that did not join. We did not think of them as a group and they were not a group, to the best of my knowledge.

Q. What was the attitude of the company on retaining those employees who did not sign as employees of the Electric Vacuum Cleaner Company?

A. They were permitted to continue with their
61 jobs without discrimination.

Q. What do you mean by without discrimination?

Was there any discrimination at the plant before this contract was signed?

A. No.

Q. Well, the company did not stop those employees who did not sign with any Federation or Local Union?

A. It was in no sense our business at that time. They were free agents, every one of them.

Q. And after the 1935 contract expired, you supplemented that by a new contract; is that right, Mr. Wilson?

A. Yes.

Q. And in 1936 the contract in substance was the same as the 1935 contract?

A. Yes.

Q. With the exception of foremen, or relatives of foremen, and the same provision and the same policies of the company as to such employees who were not members of any union was carried on during the period of 1936; is that right?

A. Except that new employees even from the period of the first contract were—the old employees were not compelled to join the union.

Q. New employees?

A. Yes.

Q. But those employees that were then employees
62 of your company in 1935 who were not members of any labor organization were not required to sign up with any labor organization in 1936 when the second contract was entered into; is that a fact?

A. Right.

Q. And no discrimination was to be exercised by the company as to those employees?

A. You are right.

Q. Now, referring to the members of the five Locals that you had a contract with, you testified that they had a right to go into the plant at any time?

A. Yes.

Q. Were their actions supervised by your company?

A. No; they had been told how to conduct themselves in the plant and they so conducted themselves.

Q. Well, how did you tell them to conduct themselves?

A. Not to interfere with our routine in our plant.

Q. In what way?

A. By stopping work while they gathered groups together for purposes of any sort.

Q. It is not quite clear to me what duties or business or function you permitted these representatives to carry on in your plant, and I would appreciate it if you would elaborate somewhat?

A. I cannot elaborate on it further than that they
63 had access to our plant and conducted themselves satisfactory to the management while in the plant.

Q. You spent a good deal of time at the plant?

A. Very little.

Q. There were a number of times where these various representatives would visit the plant?

A. Yes.

Q. And they would go through your plant?

A. Yes.

Q. And you would see them go through your plant. Did you see any of your employees pay these men money?

A. Never.

Q. Just carry on a conversation?

A. Yes.

Q. Now I call your attention to March the 17th, were you at the plant on that day, 1937?

A. Yes; I was.

Q. Was there anything unusual happened in the plant on March the 17th, 1937?

A. There is every day something unusual.

Trial Examiner Ringer: He means with reference to matters he is talking about.

A. Is there any reason why you should not ask me specifically?

Q. (By Mr. Griff) What happened ultra-unusual
64 at the plant as of March 17, 1937?

A. The 17th was what day of the week?

Q. Thursday.

Mr. Spieth: Ask him specifically what you have in mind. There will be no objection.

Q. (By Mr. Griff) Thursday, March the 18th, isn't it a

fact that you had a sit-down at your plant, Mr. Wilson?

A. Yes.

Q. Was it the 18th?

A. The night of the 18th.

Q. Isn't it a fact that a number of your employees remained in the plant, that is the employees of the first shift remained in the plant overnight?

A. That's right.

Q. Did you investigate as to what was the cause of that?

A. Yes.

Q. And from your investigation what did you find?

A. The reason was that an employee had been discharged at quitting time, a few minutes before, and as a demonstration about that the employees that you referred to stayed overnight.

Q. What was that employee's name that was discharged?

A. I don't know.

Q. You say you did not know at that time what his name was?

A. I knew at that time, but I don't recall that now.

65 Q. You knew his name, but now you don't recall it. Was his name Ramsey?

A. Yes; I believe it was Ramsey.

Q. Who discharged him?

A. His foreman.

Q. What is his foreman's name?

A. Sam Wagner.

Q. Did you investigate the cause of his discharge?

A. Yes; I knew it.

Q. Why was he discharged?

A. At the request of the American Federation of Labor.

Q. Who was present at that time for the American Federation of Labor?

A. Mr. Lenahan and Mr. McKinnon and Muehlhoffer —I couldn't tell you who all those were. There were two or three others.

Q. The American Federation of Labor insisted that Ramsey be discharged?

A. Yes.

Q. And your company complied with that request.

A. We did.

Q. And as a result of that, why the employees protested by a sitdown; is that correct?

A. Yes.

Q. And on March the 19th, isn't it a fact that Chief Corlett and a party by the name of Scott came to your plant?

66 A. I was told that Mr. Scott did not. I did not see him. I understand that he was there.

Q. Were you at the plant on March 19th?

A. Yes.

Q. Was there a meeting at that plant on March 19th in regard to this sit-down?

A. Yes.

Q. Isn't it a fact that an agreement was entered into at that time that the plant will be evacuated and production started on March the 20th?

Mr. Speith: Who was that agreement with?

Q. (By Mr. Griff) Did you and the Chief of Police and Mr. Scott enter into any agreement or any understanding in regard to evacuating the plant?

A. Chief Corlett came to us from Mr. Scott and stated that if we would agree to take back two employees who had been discharged—one only had been discharged, but there were two mentioned in this particular transaction, who the second one was I don't know—if those people would be taken back without discrimination, the plant would open up, and we said that we have no objection, to refer the matter to the American Federation of Labor, who stated that they had no objection, and on that agreement the plant was evacuated.

Q. Now, Mr. Wilson, is it a fact that just a day or so before this sit-down took place that a number of

67 representatives of these various locals with whom you had a contract had gone through the plant insisting that employees sign with the respective Locals;

do you know that as a matter of fact?

A. I do not.

Q. Were you in or about the plant during the week of March the 17th?

A. I was in my office; I was not in the plant any time.

Q. Well, the office and the plant is in the same proximity?

A. Yes.

Q. What means do you have of knowing what is going on in the plant? Is there any particular person designated to keep you in touch with the working conditions in the plant?

A. There is no routine report rendered; no. Anything of unusual nature comes up to us.

Q. You state at this time that, of your own knowledge and information, you did not know whether certain things were taking place?

A. I do.

Q. And isn't it a fact that a number of representatives of the Federation came into the plant after the all-night sit-in and attempted to evacuate the plant, and there was some missile thrown at that time?

A. That's true.

Q. In other words, there was something unusual taking place in your plant?

68 A. Yes.

Q. Did you investigate the source of that labor difficulty?

A. No; there was no formal investigation. We knew what had happened.

Q. Well, you say you knew what happened. What do you mean by that?

A. It was quite obvious what happened. A group representing one organization was having trouble with a group of another organization, and the company had no participation in it one way or another.

Q. But the company was then informed at that time that there was another organization in your plant other than the ones with whom you had a contract?

A. There were representatives of an organization, yes.

Q. And these representatives with whom you had a contract tried to persuade the employees to leave the plant; is that a fact?

A. That's true.

Q. And they were unable to do so? Is that a fact?

A. Yes, sir.

Q. After you had the meeting with Chief Corlett and Scott—

A. We had no meeting with Chief Corlett.

Q. Do you know who Mr. Scott represented?

A. I was told that he was a business agent for the C. I. O. group.

69 Q. Be that as it may, the plant was evacuated and it was then on March the 20th that you issued or had cause to publish a news item that at the request of the Federation your plant was shut down, and you testified now that the purpose of shutting down was to enter into a new agreement; is that a fact?

Mr. Speith: Oh, I object to that.

A. No; I didn't say to that.

Trial Examiner Ringer: He said he did not say it. I will overrule the objection.

Q. (By Mr. Griff) What was the purpose of shutting down your plant after the plant was evacuated and the plant was not opened for production until Monday?

A. It was at that meeting with the American Federation of Labor we were told that it would open up Monday morning.

Q. When did you receive the first information before March 20th, if any, that the plant might not open up until the following Monday?

A. Not until quite late this afternoon of the 20th.

Q. After you had this difficulty?

A. Yes.

Q. You received a notice from the representatives of the Federation requesting you to close your plant so that you could carry on negotiations in regard to the contract?

A. Well, there was to be no further negotiations in

regard to our contract. Our contract was a matter of record.

70 Q. Well, it is my understanding—and if I am wrong I wish you would correct me—that you closed your plant for the purpose of carrying on—

A. We closed the plant at their request.

Q. For what purpose?

Mr. Spieth: I object. That has been testified to. The notice speaks for itself.

Trial Examiner Ringer: Sustain the objection.

Q. (By Mr. Griff) You testified that on March the 20th you met with representatives of the Federation in Mr. Spieth's office, your counsel, and had a meeting; and you also had another meeting subsequent to that, and as a result of those meetings I believe you testified this was the contract which you—that was one of your exhibits?

Mr. Spieth: Oh, I object. That was not his testimony.

Trial Examiner Ringer: Just ask the facts, Mr. Griff. That is all we are interested in. Not what he testified to, but what is the fact.

Mr. Griff: Taking the Examiner's suggestion, I will do that.

Q. (By Mr. Griff) What is the fact as to when was the first time that this paper was drawn up?

A. Some time in the latter part, the last week in March; I think it was about the first day of April; I am not sure.

Mr. Spieth: Do you know what paper you are
71 looking at there?

The Witness: This is our new contract; isn't it, signed the 20th—oh, of course, that don't come into the thing until two weeks after the first of May. I got entirely balled upon that. That contract was—a new contract was not discussed in any way, shape or form at that meeting that you referred to.

Q. (By Mr. Griff) Well, now, Mr. Wilson, you testified, and I want to know whether it is a fact that you received notice from the Federation to close your plant so you could discuss further working conditions then existing by and between your company and the Federation?

It is not clear to me what was discussed, if anything, in view of the fact that you had an agreement that was expiring on June 23rd, 1937?

Mr. Orgill: I object, if the Court please, and I submit that he testified nothing of the kind.

Mr. Spieth: I don't understand the question.

A. I don't either.

Trial Examiner Ringer: I will sustain the objection. You can ask him as to any facts, instead of repeating his testimony and then getting into an argument whether he testified to that or not. That takes too much time.

Mr. Griff: If your Honor please, it is my understanding, and probably the records can clear it up, that Mr. Wilson testified that the plant was shut down at the
72 request of the Federation and remained shut down until April the 5th for the purpose of modifying the then working agreement or enter into a new one.

The Witness: If I said that, I never intended to do so.

Trial Examiner Ringer: It is all clear now. Go ahead, to any further matter.

Q. (By Mr. Griff) You did receive notice from the Federation to close your plant?

A. We did.

Q. And you met the following day at your counsel's office?

A. Yes.

Mr. Spieth: No, your Honor; that was not the testimony.

Trial Examiner Ringer: Well now, he is questioning the witness, and if you want to object to that question, all right.

Mr. Spieth: May I object to the question. That was not the testimony. He says that is the testimony.

Trial Examiner Ringer: Well, now, this is a form of cross-examination and I will let it stay. He can explain it later on if he wants to.

Q. (By Mr. Griff) Is it a fact that you received a letter from the Federation to close the plant?

A. On March the 20th we received such a letter.

Q. And did you inquire the purpose of shutting your

plant?

A. No, other than we were told that they said it
73 was an acute situation in our plant and we must close Monday morning or they would not appear for work Monday morning.

Q. Who would not appear for work?

A. The representatives of the American Federation of Labor.

Q. And upon that letter and that letter alone, you acted accordingly? Is that a fact?

A. That's a fact.

Q. Well, after you shut your plant, when is the next time that you met with the Federation?

A. Late, or the latter part of the following week, the first meeting having been started Saturday afternoon.

Q. Where did you meet?

A. In Mr. Speith's office.

Q. Who was there?

A. The same group approximately.

Q. What, if anything, was carried on at that meeting?

A. Nothing other than a discussion of when we might open up our plant. They were contacting their membership to see how the situation stood, and what the opportunity was for an early re-opening.

Q. And during the time the plant was shut down, you were operating under the contract as introduced in evidence as of 1936?

A. That's right.

Q. And you agreed to open the plant on April the 5th?

74 A. Yes.

Q. And you caused a notice to be placed in the newspapers. Were you present at the plant on April the 5th when the plant was supposed to be opened?

A. I was.

Q. What time did you get there?

A. Six-thirty or around that time.

Q. What time did the plant open normally for production employees to enter?

A. Seven o'clock.

Q. What time are they supposed to start working?

A. Seven-thirty.

Q. How many entrances are there at your plant in which production employees enter?

A. One.

Q. That is at the extreme south side of your plant?

A. Yes, sir.

Q. Who was stationed at the gates, if anybody, if you know?

A. Yes, I do. I don't know them individually. They were representatives of the various unions of the American Federation of Labor.

Q. How do you know that they were representatives of the Federation of Labor?

A. I did not check up. The situation was in their hands and they were delegated their own superior officers.

75 Q. Did they wear any kind of insignia on their clothes to designate them, who they were?

A. I couldn't say.

Q. And isn't it a fact that they were wearing these white buttons?

A. I couldn't say that either. I saw some buttons that day, but I didn't know that they were essential.

Q. Did you see anybody wear white buttons?

A. I did.

Q. Did you make any investigation as to what those buttons stood for?

A. No.

Q. You were not interested?

A. No.

Q. Do you know at this time what those buttons stood for?

A. No.

Q. And have you ever investigated?

A. No, sir.

Q. Did your plant start operations that morning as of April 5th?

A. Yes.

Q. How many shifts have you got working at your

plant?

A. One shift we had at that time.

Q. That starts what time?

A. Seven-thirty.

76 Q. And finishes what time?

A. Four o'clock.

Q. What time does the second shift go on?

A. I don't know. At four-thirty I guess.

Q. How many employees responded for work on the first shift as of April 5th, if you know?

A. I don't know.

Q. Were you able to start normal production?

A. No; we were not able to start normally.

Q. All right. Did you investigate why you were not able to start normal production?

A. Yes.

Q. What was the reason?

A. Because in certain departments there were very few people and others there were more. Our plant is a production plant and each department has to be manned before the plant is run, and there were certain departments in which there were a few people that morning.

Q. And isn't it a fact that a number of the employees did not punch in to go to work on April the 5th?

A. That's right, too.

Q. That is a fact; is it not?

A. That's a fact.

Q. And isn't that a fact that that is one of the reasons why you were not able to have normal production?

77 A. That's the reason.

Q. The reason. Did you investigate why, when formal notice is given out that your plant would open that certain employees did not return to work?

A. No.

Q. You did not investigate?

A. No.

Q. You were not interested?

A. Yes.

Q. Still you did not know of your own information why?

A. We have our own ideas.

Q. I want your idea?

A. My idea?

Q. Yes.

Mr. Spieth: I object to his idea.

Trial Examiner Ringer: Sustained. I don't think you can go into the various individual's ideas why all the people did not come back to work. Sustained.

Q. (By Mr. Griff) Isn't it a fact that certain employees refused employment or were refused admittance to enter the plant as of April the 5th?

A. That's true.

Q. And can you tell us why they were refused to enter the plant?

A. Yes.

78 Q. What was the reason?

A. Because they didn't have the card which was necessary for them to have to enter the plant.

Q. Now, previous to April 5th, was it necessary for your employees to show any kind of insignia of any nature?

A. No.

Q. In other words, on April the 5th, that was the first time the employees had to identify themselves?

A. That's true.

Q. And by identifying you mean that they had to show their membership affiliation; is that a fact?

A. It was a pass. I did not know what was required to get that pass.

Q. Was the pass issued by your company?

A. No.

Q. From your information, where was this pass obtainable?

A. From the various individuals of the craft unions.

Q. In other words, it was a union pass to pass through the employees' gate?

A. That's right.

Q. You were still operating under the 1936 contract?

A. Yes.

Q. As supplemented by 1935?

A. Yes.

79 Q. Now, in your 1935 and 1937 contracts, although you had a working agreement with the majority of the members, still there was a minority of some employees that were not members of any union; is that the fact?

A. I presume it is, yes.

Q. What provisions did these employees who did not have any union membership—what provisions or what means did they have to enter the plant?

A. None without getting their pass.

Q. In other words, as a condition precedent they had to get a pass from the Union?

A. That's right.

Q. And you don't know, as a matter of fact, that that means becoming a member of the Union?

A. I don't know that.

Q. You don't know that?

A. No.

Q. When you had your meeting previous to April 5th with the representatives of the various Locals and discussed your plans of opening the plant, was the method and mode of opening the plant discussed?

A. Yes; it was.

Q. Was there any consideration given to those employees who were not members of any union affiliation?

A. Not that I know of; there was no discussion at that time.

Q. How long did you remain at the plant on April 5th.

80 A. As far as I recollect, I was there all day. I might have been downtown during the day.

Q. Was there any trouble on the street?

A. At opening time?

Q. That is right?

A. Yes, there was.

Q. That continued all day; isn't that a fact?

A. No, I don't think so, very brief duration.

Q. On April 5th, did your plant open up?

A. Yes.

Q. On April 5th were any new employees hired by

your company?

A. Yes.

Q. Did you find a need for hiring new employees on opening date?

A. Yes.

Q. Can you tell us why?

A. In order to get production.

Q. Well now, when your plant shut down on March 19th, with the personnel that you had at that time, there was sufficient numbers to operate that plant then?

A. That's right.

Q. And when you opened your plant on April the 5th, if all your employees had returned, you would have been in a position to carry on normal functions?

A. Yes.

81 Q. And on April the 5th, simultaneously with the opening of your plant, you also hired new employees?

A. Yes.

Q. And you kept hiring new employees from day to day; isn't that a fact?

A. For the first and second day. I don't recall hiring any after the second day.

Q. Can you tell us now how many new employees you hired on April 5th?

A. No, sir.

Q. Who would have that information?

A. Our payroll clerk could get that information.

Q. And will you bring that information in?

A. Yes.

Q. How many new employees were hired on April the 5th?

A. Yes.

Q. Who has the duty of hiring new employees?

A. Each foreman.

Q. Each foreman hires new employees. Well, how many employees—Who tells the foreman how many new employees he has to hire?

A. The foreman?

Q. How could a foreman on his own volition hire new employees?

A. He and he alone knows how many men are required for his particular department.

82 Q. Will you clear up this point: On April the 5th your plant was supposed to be open?

A. Yes; it did open.

Q. And on the same date that your plant was supposed to open up with the same working force previous to the day that you shut down, how many employees could any foreman know at that time that he would need?

A. He couldn't tell. He made no attempt to fill up his force on that particular day.

Q. But you did say you hired new employees on April the 5th?

A. That's right.

Q. And isn't it a fact that there are still a number of your former employees who have not returned to work?

A. There are a few.

Q. And for your own information, have you investigated why they are not back to work?

A. No; we have not. Every one of them has been told he could come back to work.

Q. When was that told to them?

A. I can't hear you.

Q. When was that told to them?

A. In our notice.

Q. What notice do you mean? The notice in the newspapers?

A. The notice in the paper, yes.

Mr. Griff: That is all.

83 Trial Examiner Ringer: Mr. Spieth.

Cross-examination

Q. (By Mr. Spieth) During the time that you have been testifying to, you had a closed shop?

A. Yes.

Q. You may have misunderstood Mr. Griff, but at the time that you had the meeting at the plant on the afternoon of March 19th, when the plant was evacuated, as far as the company knew you expected to open on Monday morning?

A. Absolutely.

Q. And the first intimation that you had that there was any question about re-opening was at the time of the meeting in the afternoon, late afternoon following in my office with Federation representatives?

A. Correct.

Q. In response to a question of Mr. Lodish, referring to Exhibit A, that is attached to the answer, which is a form of the contract that was finally entered into under date of May 20th, you said you did not understand the purport of that?

A. I did not understand exactly what he meant by that, principally because that particular contract was developed while I was out of the city. I was gone from the city, as you know, almost constantly from April the 5th on. When I came back, that contract I know about only by hearsay.

Q. That contract, as far as you are informed, was
84 agreed upon between the company and the Union representatives and the shop committee?

A. Yes, sir.

Q. As being satisfactory to the company?

A. That's right.

Q. And that thereupon the contract, so far as you know, was submitted to the men in the plant, and after that the company was advised they approved the contract?

A. Before signing a new contract, we had to be certain that the contract was shown to the employees and with that full knowledge a new card signed up, again indicating a majority of membership.

Q. That is the contract which resulted and referred to as of May 20th?

A. That's right.

Q. In which, in your answer, you had nine hundred and some employees out of a total of about ten hundred and thirty-two?

A. Exactly.

Mr. Spieth: I don't think, your Honor, I have any further cross-examination at this time. It may develop later that I would like to ask a few questions and I want to reserve that right.

Trial Examiner Ringer: I will give you that right. Do you have any questions?

Mr. Woodle: We have no questions this evening.

Trial Examiner Ringer: Will you want to cross-
85 examine or ask further questions in the morning?

Mr. Woodle: We may have a few questions in the morning.

Mr. Lodish: I have a few that I want to clear up this testimony.

Redirect Examination

Q. (By Mr. Lodish) You say that Sam Wagner discharged Ramsey and that precipitated a sit-down strike. I don't believe you said anything about where that sit-down strike occurred?

A. It was on the first floor.

Q. Was it plant-wide or in one department?

A. No; it was generally known as the Machine Shop in our plant.

Q. It was in the Machine Shop?

A. Yes.

Q. And how many people were employed in the Machine Shop at that time altogether?

A. I would say in the neighborhood of a hundred and fifty.

Q. How many people engaged in the sit-down strike; do you have any idea?

A. I think it was something somewhere around a hundred.

Q. About a hundred of the hundred and fifty stayed in overnight?

A. I was told that.

Q. There was something said about Corlett stating
86 that if two people were taken back the plant would open up; the company had no objection and the A. F. of L. had no objection. Now, Scott was named; was it your understanding that he was a representative of the C. I. O.?

A. Yes.

Q. And Corlett, who is that?

A. Chief of Police of East Cleveland.

Q. Who else was present on the part of the company? Were you there?

A. I was there, yes.

Q. Was Mr. Paulus there?

A. Yes, I think he was.

Q. Anybody else that you can think of, any A. F. of L. men, organizers?

A. Yes.

Q. Now, there is some testimony about people needing a card to get in on April the 5th, and I believe in my exchange of questions and answers it was not made clear whether this card was an American Federation of Labor card; do you know that?

A. I never saw one, as I understand it, just a slip of paper indicating the name and that the individual was entitled to go to work.

Q. I am not quite clear as to where they got those cards?

A. From the representatives of the unions involved.

Q. Well, that is what you said before and that is
87 why I am asking you again. You said the representatives of the unions involved?

A. Yes.

Q. What unions?

A. The Polishers would go to the representatives of the Polishers.

Q. That is the various A. F. of L. affiliates?

A. Yes.

Q. Now, do you remember ever being referred to a telephone conversation by Mr. Tuteur, who had been called on the phone by Mr. Ray Hoff, the Electrical Workers representative saying that all workers were willing to return to work immediately under the existing agreement if the management would reconsider the closing of the plant, and that taking place at about March 22nd?

A. Did you say that I was on that telephone conversation?

Q. Yes—or did Mr. Tuteur tell you about that?

A. Yes; Mr. Tuteur told me.

Q. That is, that Ray Hoff called him and said that all

workers are willing to return to work immediately under the existing agreement if the management would reconsider the closing of the plant?

A. Yes, to that effect.

Q. You answered directly to Mr. Spieth that you had a closed shop agreement with the American Federation
88 of Labor during this period?

A. Yes.

Q. By way of explanation, it is my opinion that that is stating a conclusion. And will you tell us what was the basis for your answer, why do you think that you had a closed shop?

A. Because from the time of our first entering into an agreement with the American Federation of Labor, it was understood with us that every employee, new employee, coming into our shop, would be required at the end of a two-weeks period to either join the Federation of Labor or leave. Those two-week periods was a trial period on both sides.

Q. You say you undersfood. Is that in writing in any form?

A. No.

Q. It was just an oral agreement?

A. It was a verbal agreement entered into at the time of the first contract.

Q. And that is what you mean by a closed shop?

A. Yes.

Q. Of course, the contract shows on May the 20th that that written contract is a closed shop?

A. Of this year?

Q. Yes; May 20th.

A. Yes.

Q. But the previous contracts you say were sup-
89 plemented by an oral agreement?

A. For two years we operated on a verbal understanding with regard to it.

Q. That new employees would have to join the American Federation of Labor within two weeks or be discharged?

A. Yes. And they were so advised at the time of employment and new employees were so advised.

Mr. Lodish: That is all.

Recross-examination

Q. (By Mr. Griff) Now, carrying out the thought of the closed shop contract, who would tell the new employees that they are only two weeks trial and after two weeks they would have to sign up with the Federation? Who would tell them that?

A. The individual employing the new man.

Q. Who does your hiring?

A. I already said the foreman. Each foreman does his own hiring.

Q. Well now, I wanted a job, how would I know what foreman to see?

A. You would be referred to the foreman who needed a man. You would not see any foreman unless there had been a request made from the foreman that he needed some one.

Q. In other words, I would apply to the Personnel Department?

A. We have none.

Q. Do you have a personnel Employment Office?

90 A. No; we have no Personnel Department.

Q. Well, don't you know, as a matter of fact, that a number of employees had been hired at your plant from time to time who have never, at least at the time they remained after two weeks, never became members of any labor organizations?

A. I don't know it one way or the other. That was no part of our responsibility. We followed that up not at all.

Trial Examiner Ringer: Does counsel for A. F. of L. wish to examine?

Mr. Woodle: Yes.

Cross-examination

Q. (By Mr. Woodle) May I ask during the first part of March, 1937, or at any time until the sit-down strike occurred on March the 18th, had you had any intimation of any difficulty with any of your employees regarding the hours of work or wages or working conditions or anything of that sort?

A. No, sir.

Q. Not at all?

A. None that occurred.

Q. No difficulties of that kind had occurred for a period of how long?

A. I don't recall when we had any such difficulty except in individual cases. There had been no grievance of that sort in our plant for two years.

91 Q. In other words, up until the two years or a longer period of time, there had been no difficulty regarding your employment or regarding your employees with regard to working conditions or hours or rates of pay?

A. You are right.

Q. I believe prior to the time that you entered into this contract of June, 1935, you had had another contract with one labor organization for a number of years prior to that time; is that correct, the Metal Polishing Union?

A. Yes.

Q. About how far back did your contract with that organization extend?

A. I don't know for how many years.

Q. Quite a number of years; isn't that true?

A. That's right.

Q. The time the sit-down strike was called in your plant on March the 18th of this year, were you informed by any persons or representatives of any group that they were complaining about working conditions, hours, or rates of pay?

A. No, sir.

Q. Do you recall whether at any time during 1936 you were advised in regard to your general closed shop agreement, what you term a closed shop agreement with the

A. F. of L. Union by correspondence or otherwise, whet
you informed the Board of that during 1936?

92 A. Yes; I think there was some conversation a
some correspondence.

Mr. Woodle: That is all.

Trial Examiner Ringer: We will convene at nine-thi
in the morning.

(Thereupon, at 5:00 o'clock p. m. adjournment was h
until Friday, June 11, 1937, at 9:30 o'clock a. m.)

93 Room 2, New Court House,
Cleveland, Ohio,
Friday, June 11, 1937.

The above-entitled matter came on for hearing, pursuant to adjournment, at 9:30 o'clock a. m.

Before: William P. Ringer, Trial Examiner.

APPEARANCES:

Harry L. Lodish, Regional Attorney, on behalf of the National Labor Relations Board.

L. C. Spieth and H. A. Spring, 1568 Union Trust Building, Cleveland, Ohio, on behalf of the Electric Vacuum Cleaner Company, Inc.

Sam H. Griff, 610 Public Square Building, Cleveland, Ohio, on behalf of United Electrical & Radio Workers of America, Local 720.

Edwin F. Woodle and Bernard Wachtel, 318 Leader Building, Cleveland, Ohio, on behalf of A. F. of L. Affiliated Unions.

John H. Orgill, 1000 Guarantee Title Building, Cleveland, Ohio, on behalf of the Cleveland Federation of Labor.

94 PROCEEDINGS

(The hearing was resumed at 9:30 o'clock a. m. pursuant to adjournment.)

R. B. WILSON, the witness on the stand at the time of adjournment, resumed the stand and testified further as follows:

Redirect Examination

Q. (By Mr. Lodish) I have just one or two questions, one of them I did not touch at all, and the other by way of qualification. The answer admits some connection with

General Electric, namely, General Electric owns, I believe it says, a third of your capital stock?

A. Yes.

Q. Is there any representation from the General Electric at the Electric Vacuum Cleaner Company?

A. On our Board of Directors?

Q. Whatever your answer is?

A. Yes; there is representation on our Board.

Q. Are you such a representative?

A. I am not.

Q. Do you have any personal connection with General Electric?

A. None whatsoever.

Q. You testified that at certain times in 1935 and in 1936 you at least personally were satisfied that the
95 A. F. of L. represented the majority of your employees, and you set out in the answer the specific number of the entire amount. Now, was there any representation made to you at either of those times as to how many people each craft had?

A. I don't recall that there was any breakdown of those individual members.

Q. So that your information was that the combined A. F. of L. affiliates represented the majority of your plant, and you had no way of knowing whether a particular craft represented a majority of that particular group; do you?

A. It might have been done. Whether it was done or not, I don't know.

Q. If it had not been, it was without your knowledge; is that it?

A. Yes.

Q. You didn't know anything about it?

A. That's right. That information was easily obtainable because we have those names and in what department each individual works.

Q. But you don't know of this having been done?

A. No.

Q. You having been personally satisfied that the A. F. of L. represented a majority in June or July of 1935 and also in June or July of 1936, and later in May of 1937, did

you have any information as to whether the A. F. of L.
96 represented the majority of your employees between March 19, 1937 and April 5, 1937?

A. We had no way of knowing that.

Q. You just assumed it?

A. We did.

Q. But you have no way of knowing whether they had a particular majority during that period?

A. No checks on our part determined that.

Mr. Lodish: That is all.

Mr. Griff: Your Honor, I just have a few more questions.

Trial Examiner Ringer: All right.

Recross-examination

Q. (By Mr. Griff) Mr. Woodle asked you yesterday whether it was a fact that you had a contract with one of our Locals, the Polishers, long before you had a contract in 1935 and 1936, and you answered you did; is that correct?

A. Yes.

Q. How many polishers were covered by that contract?

A. The entire shop.

Q. How many does that comprise?

A. It was in the neighborhood of a hundred continuously during that time.

Q. Do you know when that contract was entered into?

A. I do not.

Q. Can you obtain a copy of that contract?

97 A. I don't know whether such contract is available or not. I have never seen the contract.

Q. Are you acquainted with that contract?

A. I am acquainted with the wording of it.

Q. With the substance of the contract?

A. I did not know that it was in a formal contract, in formal writing. We recognized the Polishers' Union in that shop and had a working arrangement with them for years before we had anything to do with the Labor situation.

Q. Who of your employees was negotiating head for the polishers?

A. With the polishers?

Q. Of the polishers?

A. Who of the employees?

Q. Who from the employees negotiated for the polishers?

A. They had a committee.

Q. Who were some of that committee?

A. It varied from time to time. I know them by sight. I do not recall their names. I have met them from time to time.

Q. Did that contract have a beginning and an end time?

A. No.

Q. When was that contract entered into?

A. I cannot tell you.

Q. When did that contract terminate?

A. It never terminated. It merged into our other
98 contract at the time of signing our first contract with the various craft unions in 1935. There was a closed shop in our polishing department and had been for years.

Q. How did you enforce that closed shop?

A. We did not enforce it. The people who were employed in that department were employed through the Polishers' Union.

Q. And also had other crafts like machinists, molders, and during the time that you had a polishers' working contract, you did not have a contract with the other crafts?

A. We did not.

Q. And the first that you entered into kind of a written contract was when you were in Chief Corlett's office; is that correct?

A. That's correct.

Q. That was some time in June?

A. Right.

Q. 1935?

A. '35.

Q. Now you state in your answer to the amended complaint that on February 5th, as part of this contract—referring to the contract of 1935—the Respondent notified its employees that employees attempting to interfere with Re-

spondent's contract with the American Federation of Labor Unions would be discharged. First, let me ask you when did you find it necessary to give such notice?

99 A. On the very day of the re-opening of the plant, June of 1935.

Q. In other words, you stated at that time you had eight hundred and one employees and six hundred and ten, from your information given you by the American Federation, signed up with these crafts, and the balance of approximately a hundred and ninety did not have any affiliations?

A. At the date of the signing.

Q. How was this notice given?

A. Verbally before the committee of employees, and posted on the bulletin board.

Q. Have you kept these posted on the bulletin board?

A. Kept them posted on the bulletin boards throughout the plant.

Q. Can you give us in substance what that notation said?

A. Yes; we informed our employees that we had entered into a contract with the various affiliated unions of the American Federation of Labor, having determined that the majority of the employees were members of those various organizations. Having entered into such a contract, any person in our employ in the shop who did anything to disturb the peaceful and friendly relationship would be considered as working against the best interests of the company and as such were subject to discharge.

Q. Now, this contract that you entered into gave

100 permission to the business representatives of these various Locals the right to enter in and upon the premises as they saw fit?

A. Yes.

Q. And you, of your own knowledge, do not know what business they carried on?

A. I do not.

Q. Now, you testified that when your plant was opened up that only those who had a slip were permitted to enter the plant?

A. Yes.
Q. Have you at any time seen one of those slips?
A. I saw one of them yesterday the first time.
Q. Was it anything similar to this?
A. Yes; that's it.

(Referring to document marked for identification "CIO Exhibit No. 1.")

Mr. Griff: At this time, your Honor, I offer this as Union Exhibit No. 1.

Trial Examiner Ringer: Admitted.

(The document referred to was received in evidence and marked "CIO Exhibit No. 1, Witness Wilson.")

Q. (By Mr. Griff) You testified that on March the 20th you received a letter from the federation unions desiring to modify the then existing contract and for that reason asking you to shut your plant, and that you did comply?

A. I did not say that we had been asked to
101 modify our existing contract at any time.

Q. Directing your attention to your answer on Page Five, Paragraph Fifteen, it is stated that on March the 20th, 1937, the American Federation of Labor served written notice upon Respondent: "as the bargaining agent for your employees, we request that you temporarily close your plant pending present negotiations with you relative to matters covered by our contract with you"?

A. That's right.

Q. In compliance with said notice, respondent closed its plant?

A. Yes, sir.

Q. And then you state that your plant remained closed until April 5, during which time you had numerous meetings with the Federation, then notice was issued in the various newspapers that your plant would be opened, and as a condition of the employees entering the plant they had to have one of those cards?

A. Yes.
Q. You participated in those meetings?
A. Yes.

Q. And every employee had to have one of those cards?

A. To enter our plant, yes, at that time.

Q. When your contract of 1935 expired and you entered into a contract in 1936, you did not shut down your plant then?

102 A. We did not.

Q. And all your employees did not require one of those cards as a condition of entering your plant then?

A. They did not.

Q. And you insist that the only reason why you shut your plant down from March 19th to April the 5th was as indicated in your answer?

A. I do.

Q. Now, you testified that the sit-down started in the machine department; is that correct?

A. Yes.

Q. That comprises about how many employees?

Mr. Spieth: I object to that, your Honor, we went into that yesterday.

Trial Examiner Ringer: It has all been covered.

Mr. Griff: Just one point I want to bring out.

Q. (By Mr. Griff) when the sit-down strike started in the Machine Shop, isn't it a fact that in a very short time the rest of the employees participated in the sit-down?

A. No; not that I know of. At night the only people in the plant, to the best of my belief, were in the machine work.

Q. I am informed that the Machine Shop sat down on Thursday evening; is that correct?

A. That's right.

Q. And when the rest of the employees came to

103 work the following day they participated in the sit-down also; is that right?

A. I don't interpret what happened the next day as a sit-down, no.

Q. There was a stoppage of work?

A. Yes; that's right.

Q. Would it be fair to say that the Machine Shop precipitated the stoppage of work?

A. Yes.

Q. In other words, the other employees joined in the protest for the same reason that the Machine Shop stopped work, whatever the protest might have been?

A. The reason for that I don't know of my own knowledge.

Q. Don't you know, as a matter of fact, that the Machine Shop stopped work when one of the employees was fired?

A. Yes.

Trial Examiner Ringer: That has all been covered.

Mr. Grief: Nothing further, your Honor.

Trial Examiner Ringer: Is that all for this witness now?

Mr. Spieth: I just want to ask one or two questions along this line of inquiry.

Recross-examination

Q. (By Mr. Spieth) Mr. Griff asked you whether the only reason that the plant closed was the result of this notice that was served on you on March the 20th and, as I understood it, you testified yesterday that it was as
104 the result of that notice and the fact that the Federation representatives would not go back to work unless you did shut down; is that correct?

A. That's correct.

Q. Now, with reference to the card, C. I. O. Exhibit No. 1, you did not see any of those cards until after—

A. I saw it yesterday.

Q. At the time of the re-opening of the plant was discussed, the meeting which was held in our office just prior to reopening, the question of clearance card you testified was discussed. Was the matter also discussed that there were some men that might not belong to the Union?

A. Discussed with whom?

Q. At that meeting?

A. Yes.

Q. What was the company's position with respect to those men that did not belong to the Union in getting cards?

A. Here is my understanding of the thing. We had

a contract with the American Federation of Labor which was a closed shop arrangement. We put it squarely up to the American Federation of Labor to reopen our plant and the details were not gone into at the time of the opening and these cards were not discussed and the individual cases were not discussed. On Monday or Tuesday, I have forgotten which, we were told that the American Federation of Labor was quite willing to take in the old employees, and my understanding was that it was not
105 necessary for them to join with the Union.

Mr. Griff: Just one question. I did not want to deal with the proposition of closed shop.

Recross-examination

Q. (By Mr. Griff) You have entered into two contracts, one 1935 and one 1936, and the contracts speak for themselves that they are practically identical. Now, in your own opinion, are those closed shop contracts?

Mr. Spieth: I object.

Trial Examiner Ringer: Sustained.

Q. (By Mr. Griff) What is your opinion of a closed shop contract?

Mr. Spieth: I object.

Trial Examiner Ringer: It has not been shown that he is a particular expert on that. He may well be.

Mr. Griff: I am asking him to express an opinion. He stated that he had a closed shop contract.

Trial Examiner Ringer: I will sustain the objection.

Mr. Orgill: That is one of the questions your Honor will have to decide.

Q. (By Mr. Griff) Let me ask you this question: This clearance card indicates that only members in good standing; who was to check whether or not an employee was a member in good standing?

A. The American Federation of Labor.

106 Q. And their decision was final; is that correct?

A. Yes.

Redirect Examination

Q. (By Mr. Lodish) I now hand you Board's Exhibit

No. 15 and ask you if you have ever seen that or a facsimile of that?

A. I have.

Q. And that is a newspaper notice published for and intending to advise the employees and the public generally of the fact that the plant would be closed as is stated here?

A. Yes.

Mr. Lodish: I now offer Board's Exhibit No. 15, stating that the same was taken out of the Plain Dealer on March the ~~20th~~ 21st.

Trial Examiner Ringer: Admitted.

(The paper referred to was received in evidence and marked "Board's Exhibit No. 15.")

Q. (By Mr. Lodish) I have here one of the employment clearance cards that was testified to; it is dated April the 12th, 1937, and signed by John Toth, Junior, and on the back of that, apparently in the same handwriting as the face, it makes a statement: "See Mr. Wilson in Main Office," and below that is pencil writing: "Wilson refused to see complaint; go to Toth." I will hand you that and ask you whether you know anything about this and have any explanation of it?

A. I would say that that case never came to my
107 attention. I left word at the outside office that I was in no position to discuss matters with any individual and should go through the routine channels.

Q. Would you have any information as to who wrote the pencil part? Can you recognize the handwriting?

A. I would not have the slightest idea.

Q. Then you know nothing about this?

A. I know nothing at all about that.

Mr. Spieth: I would like to have the record show that there is no union filled in.

Mr. Lodish: I would like the record further to show that the heading is "Employment Clearance Card, Cleveland Metal Trades Council, Affiliate of the American Federation of Labor," and there is a blank with a line drawn through it, which has under that line the name of the union and the number of the local, and that is blank.

Mr. Orgill: Do I understand you are offering that?

Mr. Lodish: No; I cannot offer that, because it is not properly identified by the witness and I will turn it over to counsel for respondent for purposes of cross-examination.

Mr. Spieth: I have no cross-examination. Our colloquy shows in there what it is.

Trial Examiner Ringer: Is that all, gentlemen, at this point?

Mr. Spieth: That is all under my stipulation
108 yesterday that I want to recall him later.

Mr. Woodle: I would like to ask a few questions.

Trial Examiner Ringer: All right.

Recross-examination

Q. (By Mr. Woodle) In order to clarify one or two points and perhaps to summarize some of the testimony on these points, you have testified that in June of 1935 when you entered into a contract with the A. F. of L. Unions, you were satisfied by the showing of those Unions?

A. Yes, sir.

Q. That they represented the majority of your plant; is that correct?

A. Yes, sir.

Q. And you were likewise satisfied in June of 1936 that they represented the majority at that time?

A. Yes.

Q. And in June of 1936, when your 1936 contract was entered into, on March the 18th or 19th of this year, had anything occurred or had anything been brought to your knowledge to indicate that the A. F. of L. Unions did not then represent the majority of the employees in your plant?

A. Nothing.

Q. So that on March 19th or 20th of 1937, you were requested by the representatives of those unions to close your plant for the purpose of protecting the opera-
109 tion of your business, to your knowledge, those representatives were then acting on behalf of the majority of the employees in your plant; is that correct?

A. That's right.

Q. And nothing had occurred to change your opinion or your knowledge on that point; is that correct?

A. That's right.

Q. And at the time when your advertisement appeared in the newspapers Sunday—was it Saturday? Saturday and Sunday?

A. Saturday and Sunday.

Q. That would be April 3rd and 4th of 1937, nothing had then occurred to change your knowledge as to the fact that the representatives of the A. F. of L. acted on behalf of the majority of the members in your plant; is that correct?

A. That's correct.

Q. So that when that advertisement was published, you were acting then in cooperation with those people whom you believed to represent the majority of the members of your plant; is that correct?

A. Exactly so.

Q. And the first knowledge or intimation of any kind that was brought to your attention in any way at all that somebody else was supposed to be representing the minority or purported to be representing anybody, that is any organization at all, was a letter you received or was
110 brought to your attention on the 5th of April at the time when the plant had already been opened; is that correct?

Mr. Lodish: I object to that question. It is much too inclusive. He asked whether that was the first time he had notice of anybody representing the majority, and then the question was there anybody representing anybody at all, namely a majority? He is undoubtedly answering it from his own testimony. You asked him three questions there.

Trial Examiner Ringer: Strike out the answer to that. Sustain the objection.

Q. (By Mr. Woodle) I will reframe that last question.

Q. (By Mr. Woodle) The first written notice that you had from any organization purporting to represent the majority of the members was received by you on April

the 5th after your plant had been opened?

A. That's right. That's what I understood you to mean the first time.

Recross-examination

Q. (By Mr. Griff) Isn't an employee given a time card to go to work?

A. Yes.

Q. Are you acquainted with the various steps that took place from the time that one of these cards is issued by the Federation until the time card is issued to your employee?

A. I don't know the mechanics of that.

111 Q. Who would know that procedure?

A. Mr. Waterbury.

Examination by Trial Examiner Ringer

Q. (By Trial Examiner Ringer) When you say to your knowledge the A. F. of L. was acting for the majority at that time, you mean to the best of your knowledge?

A. The best of my knowledge.

Q. You don't know they were; you just thought they were?

A. I intended to state to the best of my knowledge; I had no reason to believe otherwise.

Trial Examiner Ringer: I just want to call the attorneys' attention to the fact that this witness has been passed back and forth eleven times. Now, we cannot get anywhere if we do it that many times. I want all of you to cooperate here and watch the direct testimony and then when you question to cover all the material points that you want to ask at the time that you pick him up. I do not want you to pick him up and do not branch back into the same things after the others have finished. If you cooperate in that way, I think we can get along faster, because this makes a complicated record. Call the next witness.

Mr. Lodish: Mr. Examiner, the order of witnesses here, of course, can be handled in any number of ways and, as a matter of mercy, I think I would like to call these men who have been standing out in the hall, so I will

112 just find out who is out there and call them in one by one.

Trial Examiner Ringer: That is perfectly within your discretion as long as it does not get things balled up.

THEODORE VITOSKY, called as a witness for the National Labor Relations Board, being first sworn, testified as follows:

Direct Examination.

Q. (By Mr. Lodish) State your name and address please?

A. Theodore Vitosky, 60730 Consul Avenue.

Q. Are you at present employed?

A. No, sir.

Q. Where were you employed last?

A. Electric Vacuum Company.

Q. When did your employment cease there? When was the last time you worked at the Electric Vacuum?

A. 19th of March.

Q. That was Friday?

A. Friday.

Q. The last day it was open previous to April 5th?

A. Yes.

Q. How long had you worked at the Electric Vacuum Cleaner Company?

A. It would have been nine years the 28th of March

Q. Almost nine years?

A. Almost nine years.

113 Q. What was your job there?

A. Drill press, counter sinking.

Q. How much were you making just before your work ceased?

A. Sixty-two cents an hour.

Q. How many hours a week?

A. Forty hours a week.

Q. How much money have you earned or gotten in relief from March 19th to date?

A. None.

Q. I want to go into your affiliation, when did you first belong to any union of any kind?

A. Well, I guess that's about three years ago, the MESA.

Q. You were employed then at the Electric Vacuum Cleaner Company?

A. Yes.

Q. That was 1934?

A. I believe that's right; 1934.

Q. How long did you belong to the MESA?

A. I couldn't tell you that.

Q. Can you tell us what event occurred when your membership ceased or your activity with the MESA ceased; is there anything in your mind that can tell us that?

A. Well, it was a strike.

Q. Was it in 1935?

A. I believe in 1935, yes; I think it was in April.

114 Q. To refresh your recollection, there was a contract in evidence made June 22nd, 1935, between the A. F. of L. and the Electric Vacuum Cleaner Company; was that contract, if you remember, the result of that contract or the conclusion of that strike, does that refresh your recollection?

A. That was at the conclusion.

Q. So that the strike was immediately preceding June 22nd, 1935?

A. Yes.

Q. And you were at that time and preceding June 22nd, 1935, a member of the MESA?

A. Yes, sir.

Q. Do you happen to know how many members the MESA had?

A. No.

Mr. Spieth: I object.

Trial Examiner Ringer: He answered he did not know.

Q. (By Mr. Lodish) Did you drop out of the MESA at that time?

A. No; I guess it busted up.

Q. It just evaporated?

A. Just evaporated; yes, sir.

Q. Did you join any other union at that time, on or about June 22nd, 1935?

A. Well, either the A. F. of L., or I started before they opened up again after that MESA strike.

115 Mr. Lodish: Off the record.

(Discussion off record.)

Q. (By Mr. Lodish) So that, as far as your recollection serves you, you say that you joined the A. F. of L. on June 22nd, which was Saturday, and the plant opened on June 24th?

A. Yes, sir.

Q. What were the mechanics of your joining? Did you sign a card, did you pay money? Tell us about that.

A. Well, it was signing; the initiation was three seventy-five.

Q. Did you pay that?

A. They took it out of my pay.

Q. They took three seventy-five out of your pay?

A. Yes.

Q. When was that?

A. That was the first full pay I got after going back to work.

Q. Was that two weeks after June 24th?

A. I wouldn't say, two or three weeks.

Q. Anyway, out of your first pay, three seventy-five was taken out?

A. Yes.

Q. Have you previously signed a card or something?

A. Well, that was that card on that Saturday.

Q. Did you continue your membership in the A. F. of L.?

116 A. No, sir.

Q. Did you pay any money to that?

A. No, sir.

Q. Did you do anything about the A. F. of L. after that?

A. No, sir.

Q. Did anybody ask you for money?

A. No, sir.
Q. Nobody approached you?
A. Not once.
Q. You just let it drop?
A. Yes, sir.
Q. And that was true up until the beginning of March, 1937, that you paid nothing and nobody bothered you?
A. Yes.
Q. Now, coming into March of 1937, that is the last month in which you worked at the Electric Vacuum Cleaner Company, did you have occasion to notice any solicitation of membership in your department during that month?
A. Yes; there was some. That was the A. F. of L. trying to get the members to sign up.
Q. Did anybody try to get you to sign up?
A. No; they didn't bother me.
Q. So that your testimony is that you saw some organizer or organizers trying to sign up somebody else?
A. Yes, sir.
117 Q. Do you remember who that was?
A. Mr. Toth.
Q. Do you remember who he was trying to sign up?
A. Mannis McCaffery.
Q. Is this Mannis McCaffery a well known stage hand union organizer?
A. No; he is only nineteen years old I guess.
Q. Do you know whether he is related to him?
A. Well, it is either his uncle or something.
Q. But it is the same name?
A. The same name, yes.
Q. You say Toth asked Mannis McCaffery to sign up?
A. Yes.
Q. Had he been working there long?
A. He was about three or four weeks there at the time.
Q. He was a new employee?
A. Yes.
Q. Did you hear their conversation?
A. No; I never did.

Q. Did you have any conversation?

Mr. Spieth: I move that his other answer be stricken out. He says he was soliciting.

Trial Examiner Ringer: Overruled. You can cross-examine him on that.

Mr. Orgill: If your Honor please, I don't see
118 any need for cross-examination when a man admits that he did not hear what he testified to. I want to join in the motion to strike out.

Trial Examiner Ringer: Overruled.

Q. (By Mr. Lodish) How do you know that Toth was trying to sign up Mannis McCaffery?

A. Well, that boy came up to me and told me after he left them.

Mr. Speith: I object to that.

Mr. Orgill: I again renew my motion to strike it all out.

Trial Examiner Ringer: Overruled.

Q. (By Mr. Lodish) Did you have any conversation with Toth at that time?

A. I did a couple of days later.

Q. And what was that conversation? What did he say to you and what did you say to him?

A. Well, he asked me what I wanted and I told the boy, you know, to send him to me because I got him the job.

Mr. Orgill: I object to that.

Trial Examiner Ringer: Overruled.

Q. (By Mr. Lodish) When McCaffery spoke to you, you told McCaffery to tell Toth to see you?

A. Yes, sir.

Q. And then Toth did see you?

A. He did.

119 Mr. Lodish: Mr. Examiner, I would like to state for the record that all of this evidence being thus tied up with the conversation that he then had with Mr. Toth is perfectly relevant.

Mr. Orgill: You mean in your judgment?

Mr. Spieth: I still make my same objection.

Trial Examiner Ringer: I will overrule the objection.

Q. (By Mr. Lodish) What was the conversation between you and Mr. Toth? You started to tell us about that.

A. He come up to me and he asked me what I wanted, and I told him, I says, well, I says, "I couldn't see where a boy that has been working there a few weeks and that wasn't sure of a steady job could be signing up with the A. F. of L." Well, Mr. Toth didn't like that and I told him, I says, gee, I says, "That looks like a racket to me." Well, he says, "all right," he says, "I don't have to take that from you," and he goes over to the timekeeper and he gets my name. Of course, I think it was the day after that.

Q. Would that be the conversation?

A. That was the end of it; yes, sir.

Q. And you saw him take the time card or whatever it was, did you say he took the time card?

A. No; he went to the timekeeper and pointed me out and took my name.

Mr. Orgill: I object to that, if the Court please,
120 and ask that it go out. These questions are surmising.

Trial Examiner Ringer: Overruled.

Q. (By Mr. Lodish) Were you then called into the office?

A. The following morning yes, sir.

Q. Who told you to go to the office?

A. Sam Wagner.

Q. Who is he?

A. He is our boss on the floor.

Q. A sort of foreman?

A. He is over the foreman; he has charge of the whole floor.

Q. Did he tell you alone to go to the office?

A. No, sir; there were four others with me.

Q. Who were the four others?

A. One was Elmer Lajinski, and the other was Peter Jacobs, and the other two I don't remember.

Mr. Wachtel: May I ask what date that refers to?

Q. (By Mr. Lodish) Can you tell us that date?

A. I couldn't say, no; I know it was shortly after that.

Q. Let me refresh your recollection. Do you remember the plant closing, if that is the last time that you worked, as far as you were concerned, March 19th?

A. Yes, sir.

Q. You remember there was a sit-down strike March the 18th?

A. On a Thursday; yes, sir.

Q. How long before the sit-down strike was this
121 calling into the office?

A. Probably three days before that.

Q. So that you would say it was about March 15th—was it the same week?

A. The same week, yes.

Q. Do you remember whether it was Monday or Tuesday?

A. I couldn't tell you that.

Q. That is the closest you can tell?

A. Yes.

Q. Did you four people go to the office?

A. There were five.

Q. Five of you?

A. Five of us, yes.

Q. Four others besides yourself?

A. Yes.

Q. Did you five go to the office?

A. Yes.

Q. And who was there?

A. Mr. Paulus was there.

Q. Who is Mr. Paulus?

A. He was superintendent.

Q. Do you know his full name?

A. George Paulus.

Q. And who else was there?

A. And Bob Waterbury.

122 Q. And who is he?

A. I don't know who he is. I know he is one of the office people.

Q. You mean, to the best of your knowledge, he is

an official of the company?

A. Yes.

Q. But you don't know his exact position?

A. I don't know, no.

Q. Anybody else there besides?

A. There were about eight or ten of the A. F. of L. people.

Q. Did you recognize them or any of them or part of them?

A. Well, Mr. Toth is about the only one that I can recognize if I did see him. Outside of that, I don't know.

Q. You are just guessing that the rest were A. F. of L. men?

A. Oh, no; I am not guessing.

Q. How did you know that?

A. Because I was told that when I come downstairs in the Machine Shop.

Mr. Orgill: We ask that that go out.

Trial Examiner Ringer: What is it that you want to strike out?

Mr. Orgill: I want to strike out that he testified the information that he got from somebody else.

Mr. Lodish: I am willing to have that stricken
123 out. He says he recognized Toth and he was told that the other were A. F. of L. men. As far as I am concerned, I don't care what he was told for the time being.

Trial Examiner Ringer: That part about what he was told may go out.

Mr. Orgill: We ought to at least try to keep some semblance of legality about the record.

Q. (By Mr. Lodish) I would like you to testify only to those things that you saw or heard in connection with individuals and what was done to you and what you did to somebody else, whether it be speech or action?

A. All right.

Q. What other people said, we will get out of other people. Do you remember what time of the day it was?

A. About ten o'clock in the morning.

Q. And what time did you get to work? What time

did your work day start?

A. Seven-thirty.

Q. What happened after you got into the office before you began to have a conversation? Did you sit down, or what happened?

A. No, sir; we stood up, the five of us, and they closed the door, and Mr. Paulus said, "Well, what do you fellows intend to do?"

Q. Who was he talking to?

124 A. To the five.

Q. All right.

A. Then Elmer Lajinski happened to be the first one to answer and he says he couldn't afford to join the Union because he was not making enough.

Q. Yes.

A. Well, at that moment Mr. Toth pointed his finger at me and he says, "There's a fellow over there," he says, "said that he wouldn't join a big racket like this." Of course, I never said it was a racket. And then Mr. Paulus says, "No use talking about things like that. Just give them the cards and let them sign up." That was all we had to do is to sign up to get back to work or else go out.

Q. Anything else said by anybody there?

A. No; just the two spoke up.

Q. You didn't say anything at all?

A. Well, I did. I asked him if he wouldn't give us a day's time to think it over, and he said, "No; nothing doing. You've got to sign right now."

Q. Who said "nothing doing"?

A. Mr. Paulus.

Q. Then what happened?

A. Well then, of course, we had to sign up and we were excused back to work.

Q. Did all five of you sign up?

125 A. Yes.

Q. And you went back to work?

A. Yes.

Q. And that was about March 15th or 16th?

A. Just about.

Q. Do you know about the sit-down strike, of your own knowledge? Is that in your vicinity?

A. It was right in our Machine Shop.

Q. Do you know, of your own knowledge, what caused it?

A. I didn't know, no.

Q. You found out later?

A. I found out later after I saw them all sitting down.

Q. In other words, the first thing you knew about the sit-down strike was when you happened to walk into the department and saw them sitting down?

A. Well, that happened in the afternoon and we worked until three o'clock I guess it was when that happened.

Q. How did you know there was a sit-down strike?

A. I looked over and I seen fellows were bunched up and some were sitting down doing nothing, so I knew there was something wrong, and somebody came along and says, "Hey, don't work."

Q. Somebody came along and said don't work?

A. Yes. He said somebody got fired or something.

Q. What happened then?

A. Then we sat down and everything was quiet.

126 Q. Did your department sit down?

A. Yes.

Q. What is that department?

A. The Machine Shop.

Q. You worked in the Machine Shop?

A. Yes.

Q. Did you sit in overnight?

A. Yes, sir.

Q. You were one of the group that took part in the sit-down?

A. Yes, sir.

Q. And do you know about how many sat down in the Machine Shop?

A. Well, I guess they were all sitting down with the exception of the girls?

Q. The girls were the only ones that left?

A. They were told to go home.

Q. How many are there outside of these girls who were in the department and sat down overnight?

A. Well, I would say around ninety or a hundred.

Q. Did you after that join any other union?

A. Yes.

Q. What union did you join?

A. The C. I. O.

Q. By C. I. O., do you mean that particular branch known as the United Electrical and Radio Workers, Local No. 720?

127 A. Yes.

Q. When did you join the C. I. O.?

A. On Friday.

Q. Friday, March the 20th?

A. Friday, March the 20th.

Q. Now, did you tell anybody that you joined the C. I. O.?

A. No; I didn't tell anybody.

Q. Did you drop out of the A. F. of L. at that time when you joined the C. I. O.?

A. What way do you mean in dropping out?

Q. As I understand it, you signed the card in Mr. Paulus' office?

A. Yes, sir.

Q. About March 15th or 16th, you and four others; is that true? And that indicated that you belonged to the A. F. of L.?

A. Yes.

Q. Did you ever notify anybody that you did not belong to the A. F. of L.?

A. No; I didn't.

Q. So, as far as the A. F. of L. is concerned, they don't know that you joined the C. I. O.; do they?

A. No.

Q. Did you notice these newspaper notices that mentioned the closing of the plant and the opening of the plant?

128 A. No, sir.

Q. Did you know that the plant was closed?

A. Well, no; I didn't know because I drove there

that following Monday when they opened and I saw fellows around there, so I just drove right ahead on. I was not going to stop there for trouble.

Q. Was that the Monday after your last Friday there?

A. No, sir.

Q. You mean Monday, April the 5th?

A. Yes, sir.

Q. Now, before Monday, April the 5th, did you have any idea of when the plant would be ready to recall the employees back to work?

A. No, sir.

Q. Did you, before April the 5th, try to find out whether you could go back to work and what you would have to do about it?

A. Yes, I did.

Q. What did you do?

A. I went down to see Mr. Toth the Saturday before April the 5th.

Q. That is April 3rd?

A. Third.

Q. You went to see Mr. Toth?

A. Yes, sir.

129 Q. Where did you go to see him?

A. Metal Trades.

Q. And did you see him?

A. Yes, I did.

Q. Did you talk with him?

A. I did.

Q. What did you say and what did he say?

A. Well he told me he would let me know when he needs me.

Q. Did you ask him for anything? What did he say?

A. Well, they were all standing there, there were quite a few there that morning, and they were all standing there for that purpose, to get a card to go back to work.

Q. Did you tell him you wanted a card?

A. No; I didn't.

Q. Did anybody say they wanted cards?

A. Well, there were a few that got cards.

Q. Were you standing in line for that purpose?

A. Yes.

Q. And did you in the course of that standing in line reach your conference with Mr. Toth?

A. Yes.

Q. Tell us again what he said to you?

A. He told me that he would let me know when he needs me.

Q. And have you ever heard from him since?

A. No, sir.

130 Q. You are still waiting to hear from him?

A. I am waiting.

Q. You testified that you had worked for almost nine years?

A. Yes.

Q. During that period had you ever heard anything said about a closed shop?

A. No, sir.

Q. By anybody?

A. No, sir. The only thing I ever heard was Sam Wagner, our boss, he says, "Well, you old fellows, you don't have to work; you are all right."

Q. All you know about your union affiliations then is that you belonged to the MESA; that you joined the A. F. of L. when it re-opened and never paid any attention to it after that?

A. No, sir.

Q. You signed that card in Mr. Paulus's office about March 15th or 16th?

A. Yes.

Q. And then joined the C. I. O.?

A. Yes.

Q. March the 18th or 19th?

A. On that Friday morning; yes, sir.

Q. Then thereafter, April the 3rd, you asked Mr. Toth, or when you went to Mr. Toth for a card he said he will let you know when he wants you?

131 A. Yes.

Mr. Lodish: That is all.

Trial Examiner Ringer: Mr. Griff?

Cross-examination.

Q. (By Mr. Griff) In the early part of 1935, you testified that you were a member of the MESA when the plant was shut down on a strike; is that correct?

A. Yes.

Q. Then you became a member of the Federation when the plant opened up?

A. Yes.

Q. Can you tell us why you joined the Federation at that time, that is in '35?

Mr. Spieth: I object.

Trial Examiner Ringer: Overruled.

A. Yes. I came around that Saturday when the strike was on, around the plant, and I saw that it was pretty quiet around there, and I met one fellow and I asked him what was wrong, are they going back to work, and he says no, he says, "There is a big meeting downtown," and I said, "Where is it," and he said, "Metal Trades." And I said, "Are you going?" And he says yes, he says, "but I ain't got no car," and I says, "All right; get in, and we'll go." So we went down there. We went down there. We went down the Metal Trades and there was quite a mob there, and we sat down—

132 Mr. Orgill: Just a moment, if the Court please. I would like to have that last stricken out.

Trial Examiner Ringer: Overruled.

Mr. Orgill: Your Honor, it seems to me there ought to be some limit to the character of the testimony that goes in here. There is a man who testified that he went to the place and that he talked to somebody, didn't identify him with anybody that has anything to do with this case in any manner, with the Government, or the C. I. O., or any person or organization identified with this litigation at all. I think if he is allowed to ramble on with a lot of conversation that took place with an unidentified man, it seems to me if we are going through the record in this fashion we are going to be here until past Christmas, and get no light on the subject at all.

Trial Examiner Ringer: I will not let it go much

further. Overruled.

Q. (By Mr. Griff) When you got to the Metal Trades you testified you met a big crowd there?

A. Yes.

Q. What was taking place there?

A. After we got seated, there were men going around with A. F. of L. cards to sign up.

Q. Who were these men in the order that you recognized?

A. No; I couldn't.

Q. Who was this crowd that you talk about?

133 A. Well, it must have been a crowd of the Electric Vacuum Company.

Mr. Speith: I object.

Trial Examiner Ringer: Sustained.

Q. (By Mr. Griff) Was there anybody there to refresh your recollection that worked in your department?

A. Yes. This fellow that I drove down with.

Q. Besides this fellow that you drove down with, was there anybody else in the audience that you recognized?

A. There were some, yes.

Q. What took place at that meeting?

A. They passed these cards around to sign up for membership and one fellow handed me one and I took and stuck it in my pocket, and somebody poked me in the side, and he says, "Hey, you better get that signed up."

Mr. Spieth: I object, your Honor.

Trial Examiner Ringer: Overruled. You did sign that?

The Witness: I had to, your Honor, because they were going to sign for me.

Mr. Spieth: I object to that answer, your Honor.

Trial Examiner Ringer: Sustained. Did you sign up?

The Witness: I did, yes.

Trial Examiner Ringer: Proceed.

A. Well, that was the end of that. After they got the cards together—

134 (By Mr. Griff) And after you signed the card, you went back to work?

A. Yes.

Q. Did you investigate whether or not it was necessary for you to sign to go to work?

A. No; I didn't.

Q. And then you did go to work?

A. Yes, sir; I went back to work.

Mr. Lodish: That is all.

(Recess.)

Cross-examination

Q. (By Mr. Woodle) You told us that you first joined the American Federation of Labor in 1935; do you remember that?

A. Yes.

Q. And you had previously belonged to the MESA?

A. Yes.

Q. Do you know what the MESA stands for?

A. Yes.

Q. What?

A. Mechanics Educational Society of America.

Q. Before you joined the American Federation of Labor Union, your membership with the MESA had been cancelled; hadn't it?

A. I suppose so.

Q. You suppose it was. You know about it; don't you?

A. They broke up, yes.

135 Q. Now, before you broke up, your membership in the organization was cancelled?

A. Yes.

Q. That is a fact, isn't it?

A. (No answer.)

Q. You then joined the American Federation of Labor?

A. Yes.

Q. And did you sign a card indicating that you were a member of that organization?

A. Yes.

Q. Do you recall that on that card you instructed your employer, the Electric Vacuum Cleaner Company, to take out of your wages initiation fees for the American Federation of Labor; do you remember that?

A. Yes.

Q. You continued as a member of the American Federation of Labor up until the present time; is that right?

A. Yes.

Q. You have never dropped out of that organization?

A. I never did; no.

Q. You never notified anybody that you didn't want to be a member of the American Federation of Labor?

A. I never did.

Q. Then you are still a member of the American Federation of Labor?

136 A. I guess I am.

Q. At the time of this meeting that you told us about in the office of the company in which Mr. Toth and seven or eight other men were present, and which you attended with four members from your shop?

A. Yes.

Q. As a matter of fact, nothing at all was said to you by the plant superintendent about having to join that organization; was there?

A. Oh, yes.

Q. You were already a member of their organization; weren't you?

A. Well, yes; but they wanted me to sign again.

Q. And again when they asked you to sign the card indicating your membership, as proof of your membership of that organization, was a man by the name of McKinnon; wasn't he?

A. No, sir.

Q. Do you know Mr. McKinnon?

A. I don't know him, but I know who asked me.

Q. Are you sure you don't know a man by the name of McKinnon?

A. No; I don't.

Q. You testified on direct examination that it was Mr. Toth who said to you that you had better sign this card indicating the fact that you were still a member of the

137 American Federation of Labor?

A. No; he didn't. He only pointed me out and said that, "There was the man that said it was nothing but a racket."

Q. Going back to what occurred in the Machine Shop that you testified to, you said that there was a man present in the Machine Shop soliciting membership; is that right, soliciting membership in the A. F. of L.?

A. (No answer.)

Q. Didn't you testify to that, that someone went around the Machine Shop soliciting membership for the A. F. of L.?

A. No; I never said that.

Q. You didn't say that. You don't say that now, do you?

A. No.

Q. You don't make any such claim; do you?

A. Yes.

Mr. Griff: May I ask whether he understands the term "solicitation"?

Mr. Woodle: That is the language that was used by Mr. Lodish.

Trial Examiner Ringer: I believe he understands it all right. You know what they mean when they say soliciting membership?

The Witness: Yes; taking cards around.

Trial Examiner Ringer: Yes, getting people to join.

The Witness: Yes.

138 Q. (By Mr. Woodle) This boy Manus McCaffery that you have spoken about, how long did you know him at the time that he was working out there? How long before that had you known him?

A. Oh, about a year.

Q. A personal friend of yours?

A. Not exactly, but his mother is a personal friend of my wife's.

Q. Do you know how long he had been working out there at the time that he came to you and told you he had been asked to join the American Federation of Labor?

A. Yes; about three weeks.

Q. Didn't you know that there was an arrangement between the company and the American Federation of Labor that after an employee had been at the plant about two or three weeks that they would be asked to join the American

Federation of Labor? Didn't you know about that arrangement?

A. I did.

Q. You did. And there was noth' ng unusual about the fact that Mr. McCaffery had been asked to join the organization?

A. The boy was not promised a steady job.

Q. I mean there was nothing unusual about that; was there?

Mr. Lodish: Mr. Examiner, I would like the witness to have an opportunity to answer the question.

Trial Examiner Ringer: Let him answer the question.

A. He was not promised a steady job, and that's
139 the reason why.

Q. (By Mr. Woodle) And according to your former testimony, a short time after this Manus McCaffery had been solicited for membership in the A. F. of L. the sit-down strike occurred at the plant?

A. Yes.

Q. You testified that you took part in that sit-down strike; is that right? In other words, you sat down at the plant that night?

A. Yes.

Q. You took part then in the strike?

A. Yes.

Q. And you also testified that you did not know at the time that you took part in the strike what it was about; that was your testimony, wasn't it?

A. Yes.

Q. You didn't know until afterwards what it was all about?

A. I didn't know, no, not right away.

Q. In other words, you were there at the plant and you participated in the strike and you didn't know why you were there; is that right?

A. Yes.

Q. Do you know how many other people who participated in the strike did not know why they were sitting down or why they were there?

140 A. Mostly all of the Machine Shop with the ex-

ception of a few that got discharged.

Mr. Lodish: I object and ask that that be stricken out as not responsive, in the least, to the question.

Mr. Spieth: No; it is definitely responsive.

Mr. Lodish: He said all except those who were discharged.

Trial Examiner Ringer: Have the record read.

(Record read by the Reporter.)

Trial Examiner Ringer: I think that is responsive.

Q. (By Mr. Woodle) After the plant had been closed, you as a member of the A. F. of L. received notice by mail, did you not, advising you that there would be a meeting at the metal Trades Council with reference to this fact that the plant had been closed down?

A. I did, yes.

Q. You got such a notice?

A. I did, a postal card.

Q. And you got that notice and you knew, did you not, because you were a member of the A. F. of L.?

A. Yes.

Q. That is in 1937, just a couple of months ago we are talking about?

A. Yes.

Q. Did you attend this meeting at the Metal Trades Council that you were notified of by postal card?

141 A. No, sir.

Q. Weren't you interested?

A. No, sir.

Q. In other words, you did not care; you simply did not attend the meeting because you were not interested in going down there; is that it?

A. That's it.

Q. But after the plant re-opened, you did go down to the Metal Trades Council and you did obtain from someone at that office a card, authorizing you to go to the plant and secure an appointment; isn't that a fact?

A. No, sir.

Q. Isn't it a fact that you have such a card at the present time?

A. No, sir.

Q. Do you deny that you received from the office of the Metal Trades Council a card stating that you were entitled to be an employee at the Electric Vacuum Cleaner Company, and that you now have such a card? Do you deny that?

A. I deny that; yes, sir.

Q. And isn't it a fact that on that morning of April the 10th, that is Saturday morning, you were at the office and you saw Mr. Gordon? Do you know Mr. Gordon?

A. Well, if you point him out probably I would.

Q. Do you know a man by the name of Ralph Gordon?

142 A. I heard the name, but I don't know him in person, no.

Q. (Mr. Gordon is asked to stand up.)

A. Oh, yes, sure, I saw him.

Q. Do you know that gentleman? You saw him; didn't you?

A. Yes.

Q. About obtaining a card for re-employment at the office of the Electric Vacuum Cleaner Company?

A. I didn't see him about it, no.

Q. Did you see him there that morning when you were down there?

A. I saw him, yes, but he walked in and walked out.

Q. Did you talk to him at all?

A. No.

Q. You are positive of that?

A. Yes.

Q. What did you go down for that morning?

A. Well, I wanted my job back.

Q. You knew what you had to do in order to be employed there?

A. I did.

Q. Somebody else told you?

A. Yes.

Q. Who told you?

A. Some of the fellows that got that membership card.

Q. And that is why you went down to the office?

143 A. Yes.

Q. And it is a fact, isn't it, that you got a card that morning?

A. No, sir.

Q. Admitting you to be re-employed at the Electric Vacuum Cleaner Company?

A. No, sir.

Q. You still say that you didn't?

A. I didn't. I couldn't get it.

Q. After that Saturday, which was the 12th of April, you knew after the plant opened that you were out at the plant of the Electric Vacuum Cleaner Company?

A. I went by there.

Q. You did not stop?

A. No, sir; I didn't.

Q. You didn't try to go back to get work that morning?

A. No.

Q. And isn't it a fact that you saw Mr. Gordon at the plant on the Monday of April the 12th and you spoke to him about getting work there?

A. No.

Q. You are positive about that?

A. Yes, sir. I couldn't have because I never even stopped. I just went on when I saw the fellows around there.

Q. The plant was working on the morning of April the 12th?

144 A. I wasn't going to take no chances of my head getting busted in.

Mr. Griff: Your Honor, I think he is confused with the date of April 12th; I think he is confused about the dates.

Q. (By Mr. Woodle) Let me just be sure that you understand the date I am talking about. A week after the plant opened, this plant opened on April the 5th, Monday morning?

A. Yes, sir.

Q. A week after the plant opened, on the morning of April the 12th, you were out there at the plant?

A. No.

Q. For the purpose of obtaining employment?

A. No, sir.

Q. Then you want us to understand that you have never been out at the plant to be re-employed since the plant opened?

A. No; I never was.

Q. You never went back to get a job?

A. I was told I would be called on when they needed me.

Q. But you have never went back there to get a job; have you?

A. No; not at the plant.

Q. Your only effort to obtain employment since the plant closed on March 19th was a trip to the office of the Metal Trades Council, according to you, in which you were told that you would be called back to work when you were needed; is that right?

145 A. That's right.

Q. And according to your statement, that is the only effort you ever made to get a job since that time?

A. Just that following morning when the fellows were around there. I never went down there any more.

Mr. Woodle: That is all.

Trial Examiner Ringer: Mr. Spieth.

Mr. Spieth: I think what I would have asked him has been covered.

Trial Examiner Ringer: That is all then, is it?

Mr. Lodish: Just one question.

Redirect Examination

Q. (By Mr. Lodish) After March the 18th or 19th, as far as you were concerned, you were a member of both the A. F. of L. and the C. I. O.?

A. Yes.

Mr. Lodish: That is all.

Trial Examiner Ringer: Next witness.

Mr. Wachtel: We should like to reserve the right to recall Mr. Vitosky right after lunch for one or two questions.

Trial Examiner Ringer: Well, if you have any questions, can't you ask him just as well now?

Mr. Wachtel: No; I won't ask him any questions.

Testimony of George A. Onda

GEORGE A. ONDA, called as a witness for the National Labor Relations Board, being first duly sworn, testi-
146 fied as follows:

Direct Examination

Q. (By Mr. Lodish) Have you been sworn?
A. Yes, sir.
Q. State your full name and address?
A. George A. Onda, 9413 Holton Avenue.
Q. Are you employed at the present time?
A. No, sir.
Q. Where were you employed last?
A. Electric Vacuum Cleaner Company.
Q. When did your employment terminate there?
A. On the 19th of March.
Q. What was your job at the Electric Vacuum?
A. Welder.
Q. How long had you been working there?
A. I worked there two different times, from 1922 to '29, and from '33 to '37.
Q. About eleven years altogether?
A. Yes.
Q. And what were your earnings per hour just before your work terminated?
A. Seventy-four cents an hour.
Q. Forty hours a week?
A. Yes.
Q. Have you earned any money or gotten any
147 relief since that time?
A. No, sir; none whatsoever.
Q. I want to ask you about your previous union affiliations, if any. What was the first union that you ever belonged to?
A. MESA.
Q. When was that?
A. That was in '34 or '35.
Q. And did you drop out of the MESA?
A. No.
Q. Are you now a member of the MESA?
A. Right at the time that I signed up with the A. F.

of L. in June, that is when I terminated my affiliations, that is in '36.

Q. '35?

A. Pardon me. That was in '35, when the trouble was out there.

Q. Let me ask you a question: You were a member of the MESA in 1934 and '35?

A. Yes.

Q. When did you quit the MESA, if you did?

A. July, 1935.

Q. What was the occasion of your quitting the MESA?

A. Well, because at the time the outfit was broken up there and I felt that there was no use belonging to an organization that was not active any more.

Q. That is, the MESA had gone out on strike and
148 the strike was lost?

A. Yes, sir.

Q. And you went back to work?

A. Yes.

Q. Did you then join the A. F. of L.?

A. No, sir.

Q. You did not join the A. F. of L.?

A. Not until June 3rd, 1936.

Q. And did they ask you to join the A. F. of L. in 1935?

A. No, sir.

Q. Anybody of the management or the A. F. of L. ask you to join the Union until June 3rd?

A. No, sir.

Q. Now, how did you happen to join the A. F. of L. on June 3rd, 1936?

A. Well, Rinehart and Muehlhoffer came into the welding room and they said, "Well, how about your fellows joining up?" And I said, "As long as the rest of the fellows are joining up, I might as well join up," and the three of us who were in the welding room joined up.

Q. And that was June 3rd, 1936?

A. June 3rd.

Q. Did you remain a member of the A. F. of L. after June 3rd, 1936?

A. Yes.

149 Q. You have dropped out of the A. F. of L.?

A. Dropped out at the time I signed the C. I. O.

Q. When did you sign for the C. I. O.?

A. That was the 18th of March.

Q. That was the day before the plant closed?

A. Yes.

Q. How did you drop out of the A. F. of L.?

A. Well, you want me to state the reason?

Q. No; the mechanics, what did you do?

A. I happened to be working on the night shift.

Q. Yes?

A. Thursday evening we had a meeting down there at the Chagrin Valley Fish and Game Club, so I asked one of the fellows that was working there on the day shift to change shifts with me, so one of the fellows came up to me and he asked me, he says, "How would you like to join the C. I. O.?" And I says, "O. K.," so he gave me a card about three o'clock in the afternoon and I joined up.

Q. Was this somebody that worked at the Electric Vacuum Cleaner?

A. One of the fellows from the Machine Shop.

Q. I will now advise you that you do not have to state his name if anybody asks you.

A. In fact, I don't know it.

Q. You then signed the C. I. O. card?

150 A. Yes.

Q. And how did you drop out of the A. F. of L.?

A. In what way?

Q. How did you do it? Did you do anything about it?

A. Well, by getting appointed as a committee man for the C. I. O.

Q. Well, your answer is that you thought when you joined the C. I. O. that you were no longer a member of the A. F. of L.?

Mr. Spieth: I object.

A. Yes.

Trial Examiner Ringer: Overruled. That is his explanation.

Q. (By Mr. Lodish) Did you know about the sit-down strike that Thursday night?

A. I didn't know about it until I went upstairs. I rang up my clock on the second floor and I went up along the platform and I went upstairs and I rang up my card and a couple of the fellows were telling me that they got a sit-down strike downstairs.

Q. That was in another department?

A. Yes.

Q. Now, did you go to work Friday, March 19th?

A. No, sir; I was supposed to be on the night shift, and some of the fellows come down to the house, one of the welders that's working with me, and he told me, "Don't go in tonight, George; the plant is closed down. They are
151 still sitting down."

Q. You were not due to work the morning of March 19th?

A. No, sir; until three-thirty that afternoon.

Q. At three-thirty you had got to work and the plant was not operating?

A. Yes, sir.

Q. Did you get notice of the fact that the plant was going to be closed?

A. Yes, sir.

Q. You did not see the newspapers?

A. I saw the newspaper on Sunday.

Q. The 20th?

A. March the 21st.

Q. And then did you see a further notice that it was reopened?

A. Yes, sir.

Q. Did you get any information at all as to when the plant would open?

A. You mean through the mails?

Q. In any way. After the plant was closed, you were interested, weren't you, in when it would open?

A. Yes, I was.

Q. Did you find out anything about it?

A. I was told. We had a meeting on the 19th of March at the Postoffice.

152 Q. Yes?

A. And the Chairman of the meeting brought up

the statement at the plant that we shut down today but the plant would re-open Monday morning, the 22nd.

Q. Who was the chairman of that meeting?

A. I think it was Walter Scott, if I am not mistaken.

Q. Did you try to go to work on Monday morning, March the 22nd?

A. No, sir.

Q. You saw the newspaper notice you testified?

A. Yes.

Q. When did you next try to go back to work?

A. I went out there on the 5th of April; I went out there at about seven-thirty in the morning and, of course, I was supposed to go on the night shift, but I just wanted to see that things are going on satisfactory.

Q. Let me ask you this: Did you have any information as to whether the plant was open on April the 5th, or did you just happen to go there that day?

A. I just went out there.

Q. Then what happened?

A. Then I seen a gang of fellows around the shop, a couple of fellows told me they had had an awful row there, so I stayed around for about an hour and picked up and went back home.

153 Q. Did you try to get into the plant?

A. No, sir.

Q. Then what was the next thing that you did in connection with that?

A. We were notified on April the 8th that there was going—that was prior to April the 8th—that there was going to be a meeting on the 8th.

Q. Notified by whom?

A. Through the C. I. O. officials.

Q. There was going to be a C. I. O. meeting?

A. A C. I. O. meeting at the Postoffice.

Q. What Postoffice is that?

A. That's the old Postoffice situated in front of 147th and St. Clair.

Q. That is fairly near the plant; is it?

A. Yes, sir; a short way.

Q. Did you go to that meeting?

A. Yes.

Q. And without going into the details of that meeting, was there anything said about returning to work?

A. Yes, sir; they read, they brought up a few statements on the floor that they agreed to a truce that everybody was supposed to go back on Monday with no discrimination or no coercion.

Q. And who advised you of that?

154 A. That's James Pascoe and Mr. Griff?

Q. Did they tell you how to go back to work and what to do?

A. They told us to go down and get a card on a Saturday, and all the fellows decided that they wouldn't go in immediately; they would postpone the entering of the plant until Monday.

Q. That is, you were told at that meeting on Thursday to get a card where?

A. Down the A. F. of L. hall.

Q. Metal Trades?

A. Yes.

Q. Did you go there Saturday, April the 10th?

A. Yes.

Q. And thereafter, did you go to work Monday?

A. Monday.

Q. April the 12th?

A. Yes.

Q. And you say a group of you fellows decided to get the cards Monday?

A. No. We went down Saturday to get the card; that was on the 10th.

Q. But you did go down Saturday?

A. Yes.

Q. What happened then?

A. Well, I met Mr. Rinehart down there.

155 Q. Yes?

A. And the committee, and I asked for a clearance card, and he says, "Well, I am sorry, George, you happen to be one of the guys that's blackballed."

Q. Mr. Rinehart told you you were blackballed?

A. Yes.

Q. Any more conversation?

A. He told me, "You happen to be one of the guys that was spotted," he says, "You was on the committee."

Q. What did you do after that?

A. Well, I went down to see Ralph Lind.

Q. Is that the same day, Saturday?

A. The same day, Saturday morning.

Q. Ralph Lind, who is the Regional Director of the National Labor Relations Board?

A. Yes.

Q. And did you see Ralph Lind?

A. Yes, sir.

Q. What was the conversation you had with Mr. Lind?

A. Ralph Lind said, "Leave it go for a while; we will straighten the matter out." He says, "The company cannot put everybody back to work after having the plant closed down," so he left it go that way.

Q. Did he tell you about when you should go back to work?

A. He says, "Be in front of the gates on Monday
156 morning." That was on the 12th.

Q. He told you to go down and appear in front of the gates April 12th?

A. Yes.

Mr. Orgill: If your Honor please, I think that all of the conversation with Mr. Lind should be stricken out.

Trial Examiner Ringer: You waited until you have heard it and then you move it stricken out.

Mr. Orgill: How can I tell what it is until I hear it?

Trial Examiner Ringer: Object to it.

Mr. Orgill: How can I object to it until I hear it?

Trial Examiner Ringer: You mean the last question?

(Record read by Reporter.)

Trial Examiner Ringer: Overruled.

Mr. Orgill: What is the ruling with respect to the rest of the conversation with Mr. Lind? I would like to have it all stricken out. It could not in any way bind these people.

Trial Examiner Ringer: Overruled.

Q. (By Mr. Lodish) What did you do? Go down to the factory Monday?

A. Yes, sir.

Q. What did you do when you got there?

A. I got down there and tried to get a card from the man at the gate.

Q. Who was at the gate?

157 A. I couldn't tell you who he was. He was a pretty heavy-sized fellow down there, and one of the fellows told me he was, well he says, "That's—

Mr. Spieth: I object to what one of the fellows told him.

Q. (By Mr. Lodish) Let us hear what he said?

A. He told me—I guess his name is Hubbell. Of course, I didn't know Hubbell from the man in the moon.

Q. Somebody told you?

A. Yes.

Q. But you didn't know him?

A. No; I didn't know the man.

Q. What did this man, whose name you didn't know, say to you?

A. He told me, he said, "Well—

Mr. Spieth: I object to that.

Mr. Lodish: I withdraw that and ask this question:

Q. (By Mr. Lodish) Was this man standing in front of the gate?

A. Yes.

Q. Where was he standing?

A. He was standing right in front of the gate.

Q. Did you try to get in?

A. I didn't try to force myself in; I tried to get in peacefully.

Q. You tried to walk through the gates?

A. Yes.

158 Q. Why didn't you?

A. I did.

Q. You did walk through the gates?

A. No; I didn't get inside the plant. I was standing at the gate and he asked me to show him the card.

Q. He stopped you at the gate?

A. Yes, sir.

Q. What, if anything, was said?

A. He didn't say anything else. All he told me, he says, "You better go down the hall and see the business agent and get a card."

Q. Did you say anything?

A. No, sir; I didn't say a word to him.

Q. What was the next thing you did?

A. I come down through the middle of the week and I saw Ralph Lind again.

Q. Do you know what day that was on?

A. I couldn't tell you. It was some time during the middle of the week.

Q. Not more than two or three days after?

A. No, sir; not more than two or three days.

Q. What happened then?

Mr. Orgill: I object.

Trial Examiner Ringer: I will sustain it. I don't think we ought to hear what he said further.

159 Mr. Lodish: Of course, Mr. Examiner, that is all part of the res gestae. This man says that he got to the plant, and the reason he says he is going to the plant is because he was told to by somebody. I think, however, in deference to the ruling, I may omit any mention of Ralph Lind unless I thought that it becomes absolutely necessary and then we will connect it up. Maybe I ought to ask Mr. Lind whether his conversation should go in the record or not.

Q. (By Mr. Lodish) Without telling us anything that happened between you and Mr. Lind, I want you to answer this question. Did you see Mr. Lind again?

A. After that date?

Q. Yes; after Monday?

A. No, sir.

Q. Now, after Monday did you appear at the gates?

A. No, sir.

Q. And that was in the middle of the week?

A. Yes.

Q. What was the next thing that you did?

A. I appeared in front of the plant on the 19th of April.

Q. You went back to the factory on the 19th of April?

A. Yes.
Q. What happened on that occasion?
A. I couldn't get in again.
Q. Somebody stopped you?
160 A. Yes.
Q. Who stopped you?
A. The same man.
Q. The same man. Any conversation at that time?
A. No, sir; no conversation whatsoever. The only thing he did is ask for a card.
Q. What was the next thing you did?
A. Well, I didn't make any more effort until I was down at the meeting hall, one day, that was on the 23rd of April, and Mr. Pascoe came down there and he told us that he had the letter notifying the Board to go up to the concern and ask to be put back on the job.
Q. Did he say whom he got that letter from?
A. I think it was Ralph Lind.
Q. At any rate, Mr. Pascoe was the one who told you to go back and ask for a job for work?
A. Yes.
Q. And did you follow his instructions?
A. Yes.
Q. And what did you do?
A. I went up and I seen George Paulus.
Q. When was that?
A. That was on Friday, the 23rd.
Q. The same day?
A. The same day.
161 Q. You saw George Paulus?
A. Yes, sir.
Q. What was the conversation there?
A. Paulus told me to wait for a minute.
Q. Yes?
A. So I waited there, and pretty soon he walked up with Bob Waterbury and Johnny Tuteur.
Q. Johnny who?
A. Johnny Tuteur, that's the old man's son.
Q. All right. What was said?
A. Well, he asked me what can he do for me, and I

told him I was notified to appear over the shop for my job, and he asked me a few questions when I made my attempt to get back, and I thought it was not any material—anything to them what time did I make an attempt to get a job and go back to the factory, so I told them I went back on the 19th day, and that was on a Monday, the 19th.

Q. Yes. Don't tell us what you thought; tell us what you said and what he said?

A. I told him I was there on the 19th.

Q. What did he say?

A. Well, he says, "I'll tell you, George; you go down and get a card," he says, "and we'll put you back."

Q. Did he tell you where to go for a card?

A. Down to the Metal Trades.

162 Q. Did you thereafter go to the Metal Trades?

A. I did not go down there that Friday, but I called up that Friday afternoon.

Q. April the 23rd?

A. Twenty-third, and they told me that Mr. Muehlhoffer is out of town, and that Rinehart was issuing cards at the shop.

Q. What shop?

A. Electric Vacuum Cleaner.

Q. Who told you?

A. I dont know the man. Somebody answered the telephone.

Q. Then what did you do?

A. I came out to the shop and I talked to Rinehart on the 23rd about three-thirty, when he left the plant.

Q. Friday the 23rd?

A. Yes.

Q. This is all the same day?

A. The same day.

Q. What was your conversation with Rinehart?

A. I told him I went up to Metal Trades Hall and asked for Muehlhoffer and they told me that Muehlhoffer is out of town and that Rinehart is issuing cards in the Electric Vacuum Cleaner, so I went back to the Electric Vacuum Cleaner and talked to Rinehart, and Rinehart says, "Well, I am sorry, George; Muehlhoffer is issuing cards.

I can't do anything."

Q. Then on what did you do?

163 A. Well, I appeared there the following morning on Saturday of the 24th, I was there about ten o'clock, and there was one fellow in the office.

Q. Where did you appear Saturday morning?

A. Down at the Metal Polishers office.

Q. Yes?

A. The fellow down there told me Mr. Muehlhoffer is not in.

Q. Then what did you do?

A. Then I went back home and I came down there on a Monday morning.

Q. You went back to the Metal Trades?

A. Yes.

Q. On Monday morning?

A. Yes.

Q. What happened on that occasion?

A. Well, there was nobody down there and I couldn't get any contact with anybody about a card.

Q. Make any more attempts?

A. No, sir; I didn't make any more attempts after that.

Q. In the eleven years or so that you worked there, did you ever hear anything about a closed shop?

A. No, sir.

Q. As a matter of fact, you did not belong to the A. F. of L. until June 3rd, 1936?

164 A. That's right.

Q. And coming back again to the month of March, 1937, you testified you knew about the sit-down strike on the 18th?

A. Yes.

Q. Do you know about any solicitation of membership during that week?

A. Well, the first time I heard about it is on the 15th of March I happened to weld a piece for one of the automatic men at the shop, and after I got through welding the piece I took it over to the welder and he says, "You see that man over there?" And I said yes, and he says,

"He is one of the fellows of the A. F. of L.; they are signing up men over here."

Q. Did you know who that fellow was?

A. Yes.

Q. Who was that?

A. John Toth.

Q. What did you say?

A. I seen one of the fellows refuse him and then I went back to work.

Q. You mean you saw Toth hand somebody a card?

A. Yes.

Q. And you saw this man refuse to sign?

A. Yes.

Mr. Lodish: That is all.

165 Direct Examination

Q. (By Mr. Griff) I want to call your attention to the time that you had some difficulty which precipitated a sit-down or stoppage in work, you testified a man by the name of Walter Scott appeared at the factory. Who is Walter Scott?

A. Well, pardon me, I didn't testify to that effect, because at the time that Walter Scott appeared at the factory I was not working that day. That happened to be on the 19th of March.

Q. Who is Walter Scott?

A. Well, Walter Scott is somebody, some official of the MESA.

Q. Do you know his labor affiliations at this time; what was his labor affiliations at the time that you saw him?

A. Well, the last time that I saw him was two years ago during the MESA strike.

Q. You testified that you attended a meeting at the Old Post Office?

A. Yes.

Q. Walter Scott was there?

A. Yes.

Q. Well, do you know what labor organization he represented?

A. Yes, sir; the U. E. and R. W.

Q. Is that the C. I. O. organization?

A. Yes.

166 Q. Who was present at that meeting that you attended?

A. There must have been five or six hundred present.

Q. Were they employees of the Electric Vacuum?

A. Yes.

Q. How many were there?

A. Oh, there were between five and six hundred, I should judge.

Q. When was that meeting held?

A. The first meeting, that was on the 19th—

Q. No; this meeting?

A. That was on the 19th.

Q. While the people were still in the plant?

A. That was after everybody walked out of the plant.

Q. Everybody walked out of the plant?

A. Yes.

Q. What was the business transacted at that meeting?

A. Well, they practically transacted no business whatsoever. They notified the men and the women there that everything is settled, and that the fellows were going back to work Monday morning and appointed the new committee men.

Q. Walter Scott had charge of that meeting?

A. Yes.

Mr. Griff: That is all.

Trial Examiner Ringer: Mr. Spieth?

Mr. Spieth: Just one question.

167 Cross-examination

Q. (By Mr. Spieth) Since April the 5th, 1937, have you made any effort to get employment anywhere other than what you testified to about the Electric Vacuum Cleaner?

A. Yes.

Q. What did you do about it?

A. Well, I went down to the different factories in town and the minute I mentioned the name Electric Vacuum

Cleaner that was the end of it.

Mr. Spieth: That is all.

FREDERICK FRANK, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Lodish) Have you been sworn?

A. Yes.

Q. Will you state your full name and address, please?

A. Ferderick Frank, and the address is 2961 East 116th Street.

Q. Did you work for the Electric Vacuum Cleaner Company?

A. Yes.

Q. About how long did you work for them?

A. About five and a half years.

Q. What was the last day you worked there?

168 A. March—

Q. Did you work there at all in April?

A. No.

Q. So that the last day you worked there was March 19th?

A. March 19th?

Q. At the time that the plant closed?

A. Yes.

Q. And what job was that?

A. Drill press hand.

Q. What were you getting at that time?

A. Fifty-eight cents an hour.

Q. How many hours a week?

A. Forty.

Q. Have you earned any money since March 19th?

A. Yes.

Q. Are you working now?

A. Yes.

Q. Do you have a figure as to how much you have

earned to date since you worked at the Electric Vacuum Cleaner Company?

A. Well, I have not estimated it yet. I have not figured it.

Q. Will you state for the record about how much that is?

A. Sixth cents an hour, working nine hours every night. I worked four days last week and four days the week before. Four days up until today.

Q. Will you figure that out at your leisure, ex-
169 actly how much money you think you have made until today?

A. Yes.

Q. Can you get that to me?

A. Sure.

Q. You have a permanent job now?

A. Well, that I don't know. I couldn't say.

Q. It is apparently not a full-time job?

A. It is, but last week Decoration Day I was out, and the week before I started on Tuesday.

Q. You just started a week ago?

A. Just started a week ago.

Q. You don't know yet whether it is a permanent job?

A. I don't know. I couldn't say.

Q. Do you know whether you want to go back to work for the Electric Vacuum Cleaner now that you have another job, or don't you?

A. I don't know. I couldn't say that. I would have to see how this job works out.

Q. Will you compile those figures for us, please?

A. Yes, sure.

Q. Now, did you ever belong to the A. F. of L. a long time ago?

A. No.

Q. Did you ever belong to the MESA some time ago?

A. Yes.

170 Q. Were you a member in 1934 of the MESA?

A. Yes.

Q. And in 1935?

A. Yes.

Q. And your membership ended with the strike that has been testified to?

A. Yes.

Q. Did you then join the A. F. of L.?

A. No.

Q. Were you asked to join?

A. I never was asked until that Tuesday.

Q. What Tuesday?

A. Before the trouble started.

Q. On March the 18th, 1937?

A. Yes.

Q. So that from July, 1935, until March, 1937, almost two years you belonged to no union?

A. I didn't belong to any.

Q. You never were asked to join a union?

A. No.

Q. You never asked anybody else?

A. No.

Q. Never solicited?

A. No.

Q. Now, you said until Tuesday, March the 16th
171 —tell us what happened Tuesday, March the 16th, with respect to your union activity?

A. I came in to work—I was working nights.

Q. Yes?

A. I come into work and, of course, the fellows in the shop were telling me what was going on during the day.

Q. Yes?

A. I went to work on Saturday and worked there and John Toth, I think his name is.

Q. Yes?

A. He come up and he was talking with me there for about an hour or an hour and a half or so, and he asked me if I wanted to join. I knew what the trouble was that Tuesday and well I figured I would save trouble if I signed it and I did sign up.

Q. So you signed up then?

A. Yes.

Q. Did he say you had to sign up?

A. He didn't say you had to.
Q. He didn't say you had to?
A. No.
Q. Did you thereafter join any other unions?
A. I joined the C. I. O.
Q. When was that?
A. Thursday.
172 Q. March the 18th?
A. March the 18th.
Q. Did you drop out of the A. F. of L.?
A. Yes.
Mr. Orgill: That is asking for a conclusion.
Trial Examiner Ringer: Sustained.
Mr. Lodish: I withdraw it.
Q. (By Mr. Lodish) What did you do with reference to your A. F. of L. membership after you joined the C. I. O., if anything?
A. Well, I didn't do anything. I sent in my resignation with the rest of them the meeting that the C. I. O. had.
Q. That is March the 18th?
A. No.
Q. What date was that?
A. I don't remember what date that meeting was held.
Q. Who did you give your resignation to?
A. Well, they had a meeting and they called out the names, and I think Sam Griff, sent in the list of names.
Q. You mean Mr. Griff who is seated at the table called out the names?
A. No. Ed called out the names.
Q. Ed who?
A. Ed Koutnik.
Q. What did Mr. Griff do?
173 A. As far as I know, what I heard.
Q. What at that meeting you were watching, if anything?
A. Well, he didn't do anything.
Q. Ed Koutnik called out the names?
A. Yes.
Q. Did he call out your name?

A. Yes.

Q. What were those names called out for? What was said?

A. Well, if the people whose names were called out desired to send in a resignation they would answer yes.

Q. And did you answer when your name was called?

A. Yes.

Q. Did you hear others answer yes?

A. Yes.

Q. About how many were there, roughly?

A. I couldn't say offhand.

Q. Were there ten?

A. Oh, there was around two or three hundred.

Q. There were hundreds?

A. Yes.

Q. Is that all you did with reference to your A. F. of L. membership was at that meeting?

A. Yes.

Q. You did nothing else?

A. No.

174 Q. Did you after that try to get back to work after March the 19th?

A. Well, I went down to—I went down to the American Federation of Labor.

Q. What did you go down there for?

A. Well, I knew you had to get a card in order to get in.

Q. Where did you get that? How did you know that?

A. Well, there was an article in the paper that the shop would open and anybody desiring to go to work would have to have an A. F. of L. card.

Q. You went down to the A. F. of L. and what did you do there?

A. I went down to try to get a card.

Q. What did you do? Did you get there? Did you talk to anybody?

A. I went down there three or four times and I didn't talk to anybody that is the A. F. of L. representative.

Q. What did you do when you went there? Tell us and try to remember what you did on these occasions?

A. Well, I just went down there and waited around.

Q. Did you ask for anybody?

A. I was looking for John Toth.

Q. Where was he?

A. He was not in.

Q. How long were you waiting on each occasion?

175 A. Well, I went down there on the 16th, I remember, and I went down there and I waited around there from ten-thirty until two o'clock in the afternoon.

Q. Was that the first time you had gone there?

A. I went down on the 10th.

Q. You never did get to see anybody at the A. F. of L. headquarters; did you?

A. No.

Q. Did you make any other attempts? Did you ever go to the plant?

A. I went to the plant on the 23rd.

Q. Did you see anybody there?

A. I was talking to Mr. Paulus.

Q. You talked to Mr. Paulus?

A. Yes.

Q. What was the conversation?

A. Well, he wanted to know if I went down to try to get a card and I told him sure.

Q. What did he say?

A. I just can't remember now, but he told me that I had to get a card in order to get into the shop.

Q. And did you make any further attempts after that April 23rd?

A. I went down on the 23rd; Monday, and the 26th.

Q. April the 26th?

176 A. Yes.

Q. Where did you go?

A. 1000 Walnut Street, Metal Trades Hall.

Q. A. F. of L. Headquarters?

A. Yes.

Q. Were you successful in contacting anybody then?

A. I didn't see anybody then. I went up to John Toth's office, and the girl in the office told me that he went out and he didn't give no time when he would be back.

Q. How long did you stay then?

A. About forty-five minutes.

Q. Is that the last time?

A. That's the last time.

Q. When did you get this job that you have testified about?

A. May 25th, I started.

Q. You started on this new work May 25th?

A. Yes.

Mr. Lodish: That is all.

Trial Examiner Ringer: We will reconvene at one-thirty.

Mr. Griff: Just one question I want to ask.

Redirect Examination

Q. (By Mr. Griff) When you went down to the Metal Trades, you testified, to get a card; is that right?

A. Yes.

Q. Was anybody else down there at the same
177 time that you were down there?

A. Well, I went down there three or four times.

Q. I mean when you were down there, was anybody else there, fellow employees to get a card?

A. At different times that I was down there?

Q. Yes.

A. Sure.

Q. Did they get cards?

A. I couldn't say that because I wasn't nosey enough to find out.

Mr. Griff: That is all.

Trial Examiner Ringer: All right. We will reconvene at one-thirty.

(Thereupon, at 12 o'clock noon a recess was taken until one-thirty o'clock p. m.)

After Recess

(The hearing was resumed at one-thirty o'clock p. m. pursuant to the taking of recess.)

Testimony of Frederick Frank

FREDERICK FRANK, the witness on the stand at the time of recess, resumed the stand and testified further as follows:

Redirect Examination

Q. (By Mr. Lodish) Did you, in accordance with my request, figure out the amount of money that you earned to date?

A. Yes.

Q. Since March 19th?

178 A. Yes, sir.

Q. And did you figure as follows: May 25th to 28th, thirty-six hours; June 1st to June 4th, forty hours?

A. Yes.

Q. June 7th to June 10th, thirty-six hours?

A. Yes.

Q. Being a total of a hundred and twelve hours, which at sixty cents an hour means that the total you have earned thus far is sixty-seven twenty?

A. Yes.

Cross-examination

Q. (By Mr. Wachtel) What company are you working for now?

A. The Oster Manufacturing Company.

Mr. Spieth: I object to this testimony on his present earnings. That could not possibly affect us.

Trial Examiner Ringer: Overruled.

Redirect Examination

Q. (By Mr. Lodish) When you got this job at the Oster Manufacturing Company, did you fill out some kind of an application?

A. Well, yes, I filled out a card, statement card.

Q. To make it brief, all I want to know is this: Did you tell them or do they know that you worked for the Electric Vacuum Cleaner Company previously?

A. I did not tell them; no.

179 Mr. Spieth: I object.

Trial Examiner Ringer: Overruled.

Q. (By Mr. Lodish) You did not tell them?

A. No.
Q. You don't know whether they know that or not?
A. No; I don't know.
Mr. Lodish: That is all.
Trial Examiner Ringer: No questions.

MIKE SMITH, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Smith) Were you sworn?
A. Yes.
Q. Will you tell us your full name and address?
A. Mike Smith, 1019 East 149th Street.
Q. Are you working now?
A. No, sir.
Q. For whom did you work last?
A. Premier and Electric Vacuum Cleaner Company.
Q. Premier Electric Vacuum Company; is that the company that Mr. Tuteur is President of and Mr. Wilson Vice-President?
A. Yes, sir.
Mr. Lodish: Could it be stipulated that the Premier Electric Vacuum is the Electric Vacuum Cleaner Company?
180 Mr. Spieth: No, sir. There is a Premier Electric.
A. There is a Premier Company.
Q. (By Mr. Lodish) Where is that?
A. Premier Electric Vacuum Company?
Q. Where is that located?
A. Ivanhoe Road.
Q. Can you describe it further? Ivanhoe Road and where?
A. Between Ivanhoe and Euclid Avenue.
Q. Who was the President of that company?
A. Mr. Tuteur.
Q. Who is the Vice-President?

A. Mr. Wilson.
Q. Who was your foreman?
A. J. Rock.
Q. Is there a Sam Wagner working at that plant?
A. Sam Wagner? I don't know.
Q. Is there a George Paulus working there?
A. Yes.
Q. Is there a Bob Waterbury working there?
A. Yes.
Q. Is there a Johnny Tuteur working there?
A. Yes.
Q. Is it the same plant that Mr. Lawrence works at?
A. Yes.
Q. And Mr. Koutnik?
181 A. Yes.
Q. Mr. Vitosky?
A. Yes, sir.
Q. What department do you work in?
A. Inspection department.
Q. Do you know a Harold Keehl working for the same company?
A. Yes.
Q. John Kern?

Mr. Spieth: You don't need to go into all that.

Mr. Lodish: You won't stipulate that it is the same company.

Mr. Spieth: The Premier Vacuum Cleaner is not the Electric Vacuum Cleaner Company.

Trial Examiner Ringer: I see we have lost five minutes about something that there is not the slightest dispute about.

Mr. Lodish: I don't think there is any dispute.

Trial Examiner Ringer: You fellows can so easily help out on a question like that.

Mr. Lodish: I regret to have to do it. This man said that he worked for the Premier Company and there is no Premier Company in issue here. He is apparently confused between the Electric Vacuum Cleaner Company and the Premier, which is the trademark that they use for their cleaner, Premier 47. If the man is confused, I do not want

to confuse the record.

Trial Examiner Ringer: Is there any question
182 now that this man did work for the Respondent?

Mr. Spieth: No question that he worked for the Respondent, but Mr. Lodish talked about the Premier Vacuum Cleaner.

Trial Examiner Ringer: I think the difficulty is that Mr. Lodish does not understand fully what you said.

Q. (By Mr. Lodish) The fact that you worked at that building and that with the various people that I named and under the various superintendents and officers that you have named means that you worked for the Electric Vacuum Cleaner Company?

A. Yes, sir.

Q. Now, how long have you worked for the Electric Vacuum Cleaner Company?

A. Well, practically eighteen years.

Q. You say you were an inspector?

A. Yes, sir; inspector.

Q. How much money were you making before that work terminated?

A. Well, I was earning sixty cents an hour.

Q. How many hours a week?

A. Forty.

Q. Have you earned any money since that date?

A. No, sir.

Q. Have you received any relief?

183 A. No, sir.

Q. When did you first join a union and what union was it?

A. Well, the first union that I really had to join was the A. F. of L.

Mr. Spieth: I object to the answer and ask that it go out.

Trial Examiner Ringer: It may go out.

Q. (By Mr. Lodish) I asked you when did you first join a union and what union it was, if you remember?

A. Well, the first union?

Q. Yes.

A. It was the A. F. of L., but when?

Q. How long ago was that?

A. About six months ago.

Q. About six months ago?

A. Yes.

Q. Well, did you ever belong to any union before that?

A. No, sir.

Q. Let us see if we can place the date that you joined the A. F. of L., you say about six months ago; you mean six months ago—can you give us the date? Is there anything you have that you can tell the date?

A. Yes. (Handing book to counsel.)

Q. This book that you hand me shows the date of June 20th, 1936?

184 A. Yes, sir.

Q. Is that when you joined the Metal Polishers, Buffers, Platers International Union?

A. Yes, sir.

Q. Of course, that is a little more than six months ago?

A. Well, at that time.

Q. That is the date. Now, you had worked up to June 20th, 1936, about sixteen or seventeen years up to that time?

A. Yes.

Q. You say you never belonged to any union before you joined this one?

A. No, sir.

Q. Were you ever asked to?

A. No, sir.

Q. You never made application yourself?

A. No.

Q. Can you tell us how long you paid dues to that union?

A. Well, five months.

Q. Five months?

A. Yes.

Q. That is almost the end of 1936?

A. Yes.

Q. You never have paid after that?

A. No.

Q. Were you ever asked for those dues after that?

185 A. No, sir.

Q. Do you remember how you happened to join the A. F. of L. on that day?

A. Yes. A man came up to me and told me that I really ought to join, had to join the union or otherwise look for another job.

Mr. Spieth: I object to that. He didn't say who he talked with or anything about it.

Trial Examiner Ringer: Overruled.

Q. (By Mr. Lodish) Who said that to you, do you know?

A. Why, I don't know just exactly the fellow's name.

Mr. Spieth: Same objection.

Mr. Lodish: I will withdraw it. If he does not know. it is immaterial.

Trial Examiner Ringer: You are withdrawing both of them?

Mr. Lodish: Both questions and both answers. I am conceding the objection.

Trial Examiner Ringer: It may go out.

Q. (By Mr. Lodish) Did you afterwards ever join any other unions?

A. No, sir.

Q. I mean after June, 1936?

A. I joined the C. I. O.

Q. You joined the C. I. O.?

186 A. Yes, sir.

Q. When did you join the C. I. O.?

A. I think it was on the 21st.

Q. What day of the week was it?

A. Monday or Tuesday.

Q. Was it the Monday after the plant closed?

A. Yes.

Q. The first Monday that it was not open?

A. That's right.

Q. That is March 22nd; is that correct?

A. Yes.

Q. You joined the C. I. O. then?

A. Yes, sir.

Q. What did you do about your A. F. of L. member-

ship?

A. I have not done anything.

Q. You have done nothing, but you paid no dues since December, 1936?

A. No, sir.

Q. Did you ever try to get back to work after the plant closed?

A. Yes, sir.

Q. What did you do about it? And when?

A. I went down there on the 5th of April.

Q. April 5th you went where?

A. Went to the headquarters, Metal Trades Hall.

187 Q. That is on Walnut Street?

A. Walnut Street.

Q. What did you do there?

A. I was sent there to get a card to go to work.

Q. Who sent you there?

A. Mr. Lind.

Q. Anyway, you went there?

A. Yes.

Q. What happened when you got there?

A. When I went there, they wouldn't give me a card.

Q. What?

A. They wouldn't give me a card.

Q. Who wouldn't give you a card?

A. Mr. Mr. Muehlhoffer—not Mr. Muehlhoffer. Mr. Rinehart.

Q. Did you talk to Mr. Rinehart?

A. Yes, sir.

Q. You asked him for a card?

A. Yes.

Q. What did he say?

A. He said, "I am sorry, but we cannot give you a card."

Q. Anything else?

A. He says, in the first place, he says, "You will be fined five hundred dollars," he said, "for quitting our union."

Q. What else did he say?

A. He says, "It will be just too bad for you," and

188 then he says, "You will have to come to our meeting."

Q. What else was said by him or by you, tell us everything?

A. Well, I told him, I says I wouldn't go to the meeting, and he says, "Well, if you ain't, you will have to go," and I told him I didn't have to go. And he says, "Well, I am sorry," he says, "but we'll see that you do come down to our meeting."

Q. Did he give you a card?

A. No, sir.

Q. And then what did you do?

A. Well, I went out and I went back to Mr. Ralph Lind and I told him I couldn't get that card, and he says, "Why didn't you get a card--"

Q. Just a minute. I don't want to know now what Mr. Lind says, but will you tell us what you said to Mr. Lind and what you did afterwards? You told Mr. Lind you couldn't get a card?

A. Yes.

Q. What else did you say to him?

A. I told him, I says I want to go to work.

Q. All right now. What did you do after that conversation with Mr. Lind, and when was that?

A. That was on the 5th.

Q. The same day, Monday?

A. The same day.

Q. What did you do after that?

189 A. After that I went home, and I went back there the next day.

Q. Went where the next day?

A. I went down there, I think it was on a Wednesday.

Q. And that would be April 7th. You mean two days after Monday?

A. Yes.

Q. Where did you go?

A. I went back to the hall and they still wouldn't give me a card.

Q. Who did you see this time?

A. I tried to see Mr. Muehlhoffer.

Q. Who did you see?

A. I have not seen anybody. They said Mr. Muehlhoffer is not in.

Q. Did you talk to anybody that Wednesday?

A. That Wednesday I didn't talk to anybody then.

Q. You were just told that he was not in?

A. Yes.

Q. Did you wait around for him?

A. I waited around for him for about an hour and a half.

Q. And then you left?

A. I left.

Q. And what did you do next with regard to getting back to work?

190 A. I went back to Mr. Lind.

Q. When was that—the next day?

A. Wednesday.

Q. What did you say to him then?

A. I told him I was down to the headquarters and tried to get a card.

Q. Don't tell us what he said. What did you do after that?

A. He sent me back.

Q. Did you go back?

A. I went back again.

Q. To the A. F. of L. Headquarters?

A. Yes.

Q. The same day, Wednesday?

A. Yes.

Q. And then what happened?

A. He said: "You better see Mr. Muehlhoffer."

Q. Yes?

A. I went down to see Mr. Muehlhoffer and he was not in again.

Q. Yes?

A. So I waited around down there for a little while and then went home again.

Q. Did you make any other attempts?

A. Well then I stayed, you know, I stayed home then for a few days.

191 Q. Yes?

A. And then I went up to the office one time.
Q. Which office?
A. Down the Premier.
Q. Down the Vacuum Cleaner office?
A. Down the Vacuum Cleaner office.
Q. That was when?
A. On the 23rd.
Q. You mean April 23rd?
A. April 23rd.
Q. What happened then?
A. Well, I talked to Mr. Paulus.
Q. Mr. Paulus?
A. Mr. Paulus.
Q. What was said by you and by him in substance?
A. Why aren't you working?" And I says, "Well, I didn't get a card." And he says, "When are you going to work?" And I says, "Well, whenever I get a card." So he says, "You go downtown and see if you can get a card."
Q. What did you do then?
A. Then they told us that we better stay out the factory to see Mr. Rinehart; Mr. Muehlhoffer is not in, so we seen Mr. Rinehart.
Q. Where did you see Mr. Rinehart?
A. At the factory.
192 Q. That is, you went to the A. F. of L. Headquarters and you were told to go back to see Mr. Rinehart at the factory?
A. Yes.
Q. And you went back to see Mr. Rinehart?
A. Yes. We saw Mr. Rinehart.
Q. Who is the "we"?
A. Three or four of us.
Q. Who besides yourself?
A. Mr. George Onda and, oh I don't know, I know him by sight; I don't know his name.
Q. What did you say or was said about Mr. Rinehart?
A. Mr. Rinehart said, "I can't do nothing for you; you will have to see Mr. Muehlhoffer."
Q. And then what did you do?
A. Then we went, it was pretty near time to go home,

it was late, so we went home.

Q. All of this happened on the 23rd, April 23rd, Friday?

A. Yes.

Q. What did you do after that?

A. Well, Saturday I didn't go down, and on a Monday I went down the hall and tried to see somebody to get the job and get a card and go to work and they told me that Mr. Muehlhoffer is not in.

Q. And you didn't get to see him then either?

A. No, sir; I didn't get in to see him.

193 Q. Anything else? Is that the last time or have you tried since?

A. Well, I tried two or three times more. Nobody got a chance to see him.

Q. You mean you tried to see Mr. Muehlhoffer and you never were able to?

A. Yes.

Q. During the eighteen years you have been working there, did you ever hear anything about a closed shop?

A. No, sir.

Mr. Lodish: That is all.

Direct Examination

Q. (By Mr. Griff) Were you working out there during the week of March the 15th?

A. March 15th?

Q. That is right.

A. Yes.

Q. Did you see any representatives of the American Federation of Labor Unions inside the plant?

A. In the department where I worked in they always, most of the time were there.

Q. You saw them there in your department?

A. Yes.

Q. What did you observe them do, if anything, while they were there?

194 A. Well, they just kind of got in a group down there and was talking.

Q. Who would get in a group?

A. The men at the A. F. of L.

Q. Would they mingle among the employees of the Company?

A. Yes.

Q. You are inspector; is that right?

A. Yes.

Q. And you traveled from one part of the plant to the other?

A. Yes, sir.

Q. In your department?

A. I have to, in the last job I have done that, the last job I had permanent.

Q. From your position had you the means of observing what these presentatives of the Federation were doing, if anything? Among the Employees?

A. No, sir; I never knew.

Q. You say that you signed up as a member about six months ago?

Mr. Lodish: June, 1936; that is a year ago.

Q. (By Mr. Griff) Why did you join in June of 1936?

Mr. Spieth: I object.

Trial Examiner Ringer: Overrule the objection. Answer the question.

Q. (By Mr. Griff) What union did you join in June, 1936?

195 A. American Federation of Labor.

Q. And what particular craft?

A. Well, at that time it was an inspection union.

Q. I mean in June, 1936, you joined some Federation of the American Federation of Labor. What Federation was it?

A. I think it was the Polishers.

Q. Why did you join the Polishers in June, 1936?

Mr. Spieth: I object.

A. Well, the reason—

Trial Examiner Ringer: Overruled.

A. The reason that I had to join because I worked in that department.

Mr. Spieth: I move to strike out the answer.

Trial Examiner Ringer: Overruled.

Q. (By Mr. Griff) During the time that the plant was

down you were a member of what union?

A. At the time the plant was down?

Q. Yes; March 19th to April 5, 1937?

Mr. Wachtel: I object to it. It calls for a conclusion.

Trial Examiner Ringer: Overruled. Answer the question. What union did you belong to during that period?

A. The Witness: To that one I belonged, the American Federation of Labor.

Q. (By Mr. Griff) When the plant was down you were a member of the American Federation of Labor?

196 A. When the plant was down from the 19th to the 22nd, I still belonged to the American Federation of Labor, and on the 23rd I joined the C. I. O.

Q. On March 23rd you became a member of the C. I. O.?

Mr. Lodish: He testified Monday, March the 22nd.

A. Yes.

Q. (By Mr. Griff) And as a member of the C. I. O., did you attend any of the meetings?

A. C. I. O. meetings?

Q. That is right.

A. Yes.

Q. Where?

A. Arnold Hall.

Q. Where is that?

A. On East 152nd Street.

Q. Did you attend any other meetings at any other hall?

A. The Old Postoffice.

Q. Were those meetings that you attended attended by any other employees of the Electric Vacuum Cleaner Company?

A. No, sir.

Q. Well, when you would arrive at those meetings, was there any other people?

Mr. Orgill: Now, if the Court please, we submit that he ought to have no right to continuously cross-examine his own witness. He said there was nobody there but

197 himself; that is the answer. Why should he be permitted to constantly cross-examine his own witness?

Trial Examiner Ringer: Well, I want to find out the

truth here. I think that he does not fully understand that.

Mr. Griff: It is hard to believe that he ever attended a meeting where one man was there.

Mr. Orgill: I have not the slightest idea.

Trial Examiner Ringer: Let us not argue back and forth now. Just make the objection. If there will be any discussion between counsel, let it be through the Trial Examiner.

Examination by Trial Examiner Ringer

Q. (By Trial Examiner Ringer) Were there other people at these meetings from your plant?

A. No, sir; I did not know anybody.

Q. You did not know?

A. Well, my own plant.

Q. They want to find out whether there were men there from your own plant?

A. Absolutely, sure.

Trial Examiner Ringer: Proceed now.

Direct Examination (Continued)

Q. (By Mr. Griff) When was the first meeting held at Arnold Hall where employees of the plant of yours attended?

A. The first meeting?

Q. Yes.

198 A. At the Arnold Hall—at the Postoffice.

Q. No; my question was: When was the first meeting that you attended that was also attended by other employees of the Electric Vacuum Cleaner Company at the Arnold Hall?

A. That was at the Arnold Hall the first meeting.

Q. When?

A. Well, I don't know exactly the date.

Q. To refresh your recollection, the plant shut down March 19th?

A. 19th.

Q. Was there a meeting called shortly after?

A. Yes, sir; that meeting in the Postoffice.

Q. Who called that meeting, if you know?

A. I don't know who called that meeting.

Q. Do you know whether there was a man by the name of Walter Scott there?

A. No, sir.

Q. When you got there, what, in your opinion, was the attendance?

Mr. Spieth: I object. That is entirely immaterial.

Trial Examiner Ringer: What is your theory of the materiality of that?

Mr. Griff: It is this, your Honor: We expect to show, at least I believe that there is some evidence that anywheres from five to six hundred employees attended that
199 meeting, and that was a meeting conducted by and under the auspices of the C. I. O. representative.

Trial Examiner Ringer: Won't you have other witnesses that can prove that? This man is not clear on those things.

Direct Examination

Q. (By Mr. Lodish) Have you ever been on the witness stand before?

A. I have.

Q. You have been?

A. Yes.

Direct Examination

Q. (By Mr. Griff) The first meeting that you attended at the Postoffice was the hall well filled?

Mr. Spieth: I object to that.

Trial Examiner Ringer: Overruled.

Mr. Orgill: Now, if the Court please, what information would that give us? It may have been a ten by twelve hall; it may have been a fifty by hundred hall. What information does that give us?

Trial Examiner Ringer: We will get some information and, of course, there is full opportunity to cross-examine. He might ask that question the very next one. Overruled.

Q. (By Mr. Griff) Was the hall filled?

A. Yes, sir.

Q. Can you give us some idea as to what the size

200 of the hall was?

A. Well, about pretty near—the Arnold Hall?

Q. This meeting at the Old Postoffice?

A. The Old Postoffice? Oh, a room as big as, pretty near twice as big as this room.

Q. And when you testified that the room was well filled, you mean that the Postoffice Hall is twice the size?

A. Yes.

Mr. Spieth: My objection may stand I presume to this continued line of testimony.

Q. (By Mr. Griff) Did you attend any meeting at the Arnold Hall?

A. Yes.

Q. How large is Arnold Hall?

A. Arnold Hall is quite a good size.

Q. Well, using this room as a comparison, would you say it was as large, larger, or smaller?

A. As large as this.

Q. As large as this one?

A. Yes.

Q. And at that time, that meeting that you attended, that was during the time the plant was shut down?

A. Yes.

Q. And by whom were these meetings attended?

A. By the C. I. O. representatives.

201 Q. When you say C. I. O. members, who do you mean?

A. Mr. Pascoe, Mr. Scott, Mr. Taylor. Well, there is quite a few of them.

Q. These that you named specifically are the officials?

A. Yes.

Q. Who would be the audience?

A. Mr. Pascoe would be the main.

Q. Who would attend these meetings outside of Pascoe, that you mentioned?

A. The employees.

Q. The employees of the Electric Vacuum?

A. Absolutely.

Mr. Spieth: I object to that, your Honor. It is perfectly apparent that man, he attends a meeting at a hall

twice as large as this room, well filled, could not say whether there were employees of the Electric Vacuum Company or who they were. It is a physical impossibility.

Trial Examiner Ringer: It goes to the weight. Overrule the objection. Let us go along as fast as we can, Mr. Griff.

Mr. Griff: That is all.

Trial Examiner Ringer: Respondent?

Mr. Spieth: No questions.

Trial Examiner Ringer: American Federation of Labor counsel?

Cross-examination

202 Q. (By Mr. Woodle) You say you joined the American Federation of Labor in 1936?

A. Yes.

Q. You belonged to other organizations and clubs before?

A. I belong to the C. I. O. now.

Q. Have you ever belonged to any other clubs of any kind?

A. No, sir.

Q. No other organizations?

A. No, sir.

Q. Didn't you know the American Federation of Labor, that is the group that you joined, had rules and regulations so that they could operate unions the way the organization operated so that they can carry on the work?

A. Yes.

Q. You knew about that?

A. Yes.

Q. You knew that one of the rules of the organization had to do with the payment of dues; did you know about that?

A. Yes.

Q. You knew you were supposed to pay dues?

A. Yes.

Q. As a matter of fact, you remember you did pay your dues for quite a number of months after you joined?

A. Yes.

Q. Did you know about a rule of the American
203 Federation of Labor that said after you didn't pay your dues you were not a member in good standing and was liable to be expelled; did you know about that rule?

A. I knew that, yes.

Q. You knew about that rule?

A. Yes.

Q. Well, as a matter of fact, didn't you know when you stopped paying your dues at the end of 1936 you were no longer a member of that organization in good standing; did you know that?

A. Yes.

Q. So that when you stated that in March, 1936, you were a member of the American Federation of Labor, don't you know that at that time you were not a member of that organization in good standing because you had not paid your dues; don't you know that?

A. Yes, but in another question, I really didn't want to belong to the American Federation of Labor when they made me belong to it.

Q. That is not the question I am asking you now. We will get to that some other time. I am asking you now whether in March of 1936 you were a member of the American Federation of Labor in good standing, whether you claim that you were? Do you claim that you were?

Mr. Lodish: I object.

204 Trial Examiner Ringer: It does not make any difference what he claims. Find out what the facts are.

Mr. Lodish: Mr. Examiner, I object on the further ground that he is asking for a conclusion. This man is behind in dues five or six months. Frankly, I don't know whether he is a member of the American Federation of Labor, and I probably know more about it than he does. I think it is definitely calling for a conclusion that he probably is not qualified to answer.

Trial Examiner Ringer: Under the circumstances, I will agree with counsel. Sustain the objection. Strike out that answer that has been made.

Q. (By Mr. Woodle) Did you know about the rule of the American Federation of Labor that if you quit that organization and joined another labor union, a rival labor union, you were subject to be fined by the American Federation of Labor? Did you know that rule?

A. Well, the reason—

Trial Examiner Ringer: Just yes or no.

A. No; I didn't know that. They have not said anything about it.

Q. (By Mr. Woodle) You did not know when?

A. I did not know anything about it when you quit one organization that I couldn't join another one.

Q. You didn't know about that?

A. No.

205 Q. When did you first find out about it?

A. When Mr. Rinehart told me that.

Q. That is the first time you found out about it?

A. Yes.

Q. As a matter of fact, is that the reason that you were unable to secure a card authorizing you to return to work at the plant?

A. Yes.

Mr. Woodle: That is all.

Mr. Lodish: Just one question.

Redirect Examination

Q. (By Mr. Lodish) Is this what you have reference to about the membership in the American Federation of Labor (showing document to witness)?

A. Yes.

Q. Did you ever have any documents or paper or anything else that showed you the rules and regulations?

A. No, sir.

Q. Did anybody ever tell you the rules and regulations?

A. No, sir.

Mr. Lodish: I submit this for your examination, Mr. Examiner, to see that there is nothing about the rules and regulations in here (handing document to Trial Examiner Ringer).

Trial Examiner Ringer: That is all.

206 MITCHELL FRANCE, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Lodish) Were you sworn?

A. No.

(The Witness was thereupon sworn in by the Trial Examiner.)

Q. Will you state your full name and address, please?

A. Mitchell France.

Q. And your address?

A. 1118 Ansel Road.

Q. Do you work now?

A. No, sir.

Q. Where did you work before?

A. Premier Electric Vacuum.

Q. Is that also known as the Electric Vacuum Cleaner Company?

A. That is right.

Mr. Spieth: I don't want the record to show that. He was employed by the Respondent. Ask him that and let us keep it clear.

Mr. Lodish: I am sorry.

Q. (By Mr. Lodish) Now you say you were an employee of the Respondent in this action?

A. Yes.

Q. What was the last day you worked there?

207 A. 18th of March.

Q. March the 18th?

A. Yes, sir.

Q. Were you there March 19th?

A. Yes.

Q. Did you work?

A. I didn't work.

Q. Why didn't you work March the 19th?

A. I worked on the night shift, and when I got there the plant was out.

Q. Was not operating?

A. No.

Q. What was your job at the Electric Vacuum Company?

A. Welder.

Q. And how much were you making?

A. Fifty-eight cents an hour.

Q. How many hours a week?

A. Forty.

Q. Have you earned any money or gotten any relief since that date?

A. No.

Q. How long have you worked for the Electric Vacuum?

A. Four years.

Q. Did you ever belong to any union a few years ago?

A. Yes.

208 Q. What was that first union?

A. MESA.

Q. And when did you belong to them?

A. About three years ago.

Q. In 1934?

A. Yes.

Q. Did you belong to it until the summer of 1935?

A. Yes.

Q. Until the strike?

A. Yes.

Q. And did you then join the A. F. of L. after the strike?

A. Yes.

Q. Did you pay anything at the beginning when you joined the A. F. of L.?

A. I did.

Q. Did you pay anything after that?

A. I did.

Q. How long did you keep paying dues to the A. F. of L.?

A. About three months prior to the strike.

Q. Prior to the strike?

A. Before the strike.

Q. Which strike do you mean?

A. Until the time of the strike.

Q. You mean the one in 1937?

A. Yes.

209 Q. So that you paid dues until the end of 1936?

A. Approximately; yes, sir.

Q. And then you quit paying dues?

A. Yes.

Q. Did anybody ask you for dues after that?

A. No.

Q. You never offered to pay?

A. No.

Q. Did you take part in the sit-down strike Thursday night?

A. No.

Q. You didn't?

A. No.

Q. That was in a different department?

A. Yes.

Q. Did anybody ask you to join the A. F. of L, or to rejoin, whatever the case may be, in March of 1937?

A. No.

Q. Nobody spoke to you at all?

A. No.

Q. Did you ever join any other union recently?

A. No.

Q. You never joined the C. I. O.?

A. I joined the C. I. O. the day of the strike.

Q. Well, that is what I mean. When did you join the C. I. O.?

A. The 19th.

210 Q. Friday, March the 19th?

A. Yes.

Q. How did you join it? Somebody give you a card?

A. No; I asked for a card to join.

Q. Where?

A. On St. Clair at the Old Post Office.

Q. Was this before or after you had tried to go to work?

A. That was before.

Q. And on your way to work you joined the C. I. O. at the Old Post Office?

A. Yes.

Q. Is that the Old Post Office?

A. Yes.

Q. Did you do anything about your American Federation of Labor membership and join the C. I. O.?

A. Well, I tried to get into work, but I couldn't get a card.

Q. I am coming to that later. I mean when you joined the C. I. O., what did you do about your American Federation of Labor membership?

A. I didn't have the book right with me.

Q. But you still have one somewhere?

A. Yes, sir.

Q. Did you do anything about it?

A. No.

Q. You just joined the C. I. O. at that time, now
211 tell us about your attempt to go back to work. When was the first time you tried?

A. Well, the fifth of April.

Q. That is Monday?

A. Yes.

Q. What did you do that day?

A. I went to the gates and tried to get in.

Q. Yes?

A. They refused to admit me.

Q. Who refused?

A. Mr. Rinehart.

Q. What did he say?

A. He says I couldn't get in.

Q. What else did he say, if anything?

A. Well, he asked me first if I had a card, and I told him no.

Q. Then what did you do?

A. I went down the A. F. of L., and I was told to go down to the A. F. of L. headquarters and try to get a card there, and nobody was there, and it was on the 19th—on the 12th—10th and the 12th—I was there both times and nobody was there.

Q. When you say 10th or 12th, are you talking about dates?

A. Dates.

Q. You mean April 10th and April 12th?

212 A. Yes.

Q. Nobody at all was there?

A. Nobody at all.

Q. The place was closed?

A. It wasn't opened up. I was there about nine or nine-thirty in the morning.

Q. What else have you done about trying to get your job back?

A. Nothing else.

Q. You never did get a chance to talk to anybody at the A. F. of L. headquarters?

A. No.

Q. Did you ever go back to the factory after the 10th and the 12th?

A. Yes.

Q. When was that?

A. On the 23rd.

Q. What did you do on the 23rd?

A. Well, we went to the office—

Q. Who is "we"?

A. The fellows that were with me.

Q. And about how many were with you?

A. About eighteen.

Q. All right. You went to the office, did you say?

A. Yes.

213 Q. Did you see anybody there?

A. Yes.

Q. Who did you see?

A. Mr. Wilson, Johnny Tuteur, some of the A. F. of L. men.

Q. Describe any of them by sight or name?

A. That was one of them (indicating).

Mr. Lodish: Witness points to Mr. Ledasil.

Q. (By Mr. Lodish) Do you know any of the other names there?

A. No.

Q. What was said on April 23rd at that particular time? By anybody that you can remember?

A. They asked me if I tried to get in.

Q. Who asked you?

A. Mr. Tuteur asked me if I tried to get a job at the plant and I said yes, but I went to the gate and they refused me.

Q. Yes?

A. And he asked me to go and get a card down the A. F. of L. and I couldn't get one.

Q. He asked you to get a card?

A. Yes.

Q. What did you do about that?

A. I couldn't get one.

Q. You tried?

A. Yes.

214 Q. What did you do? How did you try?

A. We were refused.

Q. You are talking conclusions. You say you were refused. Tell us what happened, where did you go?

A. I went down the A. F. of L. hall.

Q. What did you do there?

A. I asked for a card and he says they don't have no card.

Q. Who in—

A. I don't know.

Q. Some man?

A. Yes.

Q. Was it inside?

A. Yes.

Q. What did he say?

A. He said they don't issue any cards.

Mr. Spieth: I object to anything like this. He does not know who he talked with.

Trial Examiner Ringer: Overruled.

Mr. Wachtel: I would like to ask for the record that the answer be stricken out and I join in the objection for the further reason that there are a great deal of Locals and he would have to identify it in order to make it relevant. If he does not know which Local he approached, it would have nothing to do with this case.

Trial Examiner Ringer: Overruled. You may cross-

215 examine on that.

Q. (By Mr. Lodish) Was that the last attempt you made?

A. Yes.

Q. During the four years that you have been working there, have you ever heard anything said about a closed shop?

A. No, sir.

Q. When you stopped paying dues to the A. F. of L., did anybody say anything to you about a closed shop?

A. No.

Q. Did you attend the C. I. O. meeting?

A. Yes.

Q. Did you ever attend meetings at which Mr. Pascoe and Mr. Griff were present?

A. Yes.

Q. Where were those meetings?

A. Down at 152nd, the Old Post Office.

Q. The Old Post Office?

A. Yes.

Q. Were you at any time at any of these meetings asked by somebody whether you wanted to resign from the A. F. of L.?

Mr. Spieth: Oh, I object, your Honor.

Trial Examiner Ringer: Why?

Mr. Spieth: He goes to the C. I. O. and somebody asked him there whether he wanted to resign from the A. F. of L., and what does that have to do with our situation?

216 Mr. Lodish: It is all connected up, Mr. Examiner, and Mr. Wilson said that he received a letter April 22nd stating that the C. I. O. had a majority.

Mr. Spieth: That does not connect it up with that. We got a letter signed by five people saying that they have a majority and you bring one man in here who talked to somebody at a meeting and says we would like to resign from the American Federation of Labor, and you say that connects it up, binds us. I think it is absolutely incompetent.

Trial Examiner Ringer: Overruled.

Q. (By Mr. Lodish) Were you present at such a meeting?

A. Yes.

Q. Was your name read at that meeting?

A. At the C. I. O. meeting?

Q. Yes.

A. Yes.

Q. And did you answer yes to the request?

A. Yes.

Mr. Spieth: My objection, I take it, applies to the rest of that testimony?

Mr. Lodish: That is all.

Mr. Griff: No examination.

Trial Examiner Ringer: Mr. Spieth.

Cross-examination

Q. (By Mr. Spieth) Do you know Mr. Wilson when you see him?

217 A. Yes.

Q. Do you see him in the room now?

A. Yes, sir; right in back of you.

Q. Did I understand you correctly when you said you saw Mr. Wilson and talked with him in the office of the company about coming back to work?

A. I didn't talk with him.

Q. When you say you saw him, what do you mean by that?

A. I saw him at the desk.

Q. Was in the room when you were talking about coming back?

A. I believe he was and Mr. Paulus.

Q. What was that?

A. And Mr. Paulus.

Q. You say you talked to Mr. Tuteur?

A. Mr. Tuteur and Mr. Paulus was there, too.

Q. You talked to Mr. Tuteur and he told you to go and see about a card. Which Mr. Tuteur was that?

A. The older Tuteur.

Q. John Tuteur?

A. John.

Trial Examiner Ringer: Any further questions?

Cross-examination

Q. (By Mr. Wachtel) You said you joined the A. F. of L. after you stepped out of the MESA in 1935?

A. Yes.

218 Q. And which Local did you join?

A. I don't remember the number of the Local.

Q. Did you have a dues book?

A. Yes.

Q. Have you got it with you?

A. No; not with me.

Q. Did you pay dues, you said until the beginning of 1937?

A. Yes.

Q. Who did you pay dues to?

A. Mr. Rinehart.

Q. Mr. Rinehart?

A. Yes.

Mr. Lodish: I will stipulate the Local, what is it, the Polishers?

Q. (Mr. Wachtel) Then you are a member of the Polishers' Local?

A. No.

Q. Were you a member of the Polishers' Local?

A. No; I am a member of the Federal Union.

Q. And you paid dues to Rinehart only?

A. Yes.

Q. Did you attend meetings?

A. No.

Q. You never attended any meetings?

A. No.

219 Q. And after you joined the C. I. O. you did not speak to any member of the Local with reference to membership in the A. F. of L.?

A. I spoke to Mr. Rinehart.

Q. What did you say to him?

A. I asked him if there was any chance of getting into the plant and he didn't answer me.

Q. He didn't answer you?

A. No.

Q. You didn't say anything to him about having resigned from the A. F. of L.?

A. No.

Q. You didn't resign as a member of the Local? You did not send a resignation in to anyone?

A. No.

Q. You didn't tell anyone that you belonged to the A. F. of L.; did you?

A. No.

Mr. Wachtel: That is all.

Trial Examiner Ringer: That is all. Six-minute recess.

(Recess.)

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220 EDWARD KOUTNIK, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Lodish) Were you sworn, Mr. Koutnik?

A. Yes, sir.

Q. Will you state your full name and address?

A. Edward Koutnik, K-o-u-t-n-i-k; 1961 East 116th Street.

Q. Are you working now?

A. No, sir.

Q. Where did you work previously?

A. Electric Vacuum Cleaner Company.

Q. When was the last day you worked there?

A. The 19th day of March.

Q. What was your job?

A. Inspector in the machine shop.

Q. How much were you making?

A. Sixty-three cents an hour.

Q. Forty-hour week?

A. Forty-hour week.

Q. Have you earned any money or gotten any relief since that date?

A. Not a cent.

Q. How long did you work at the Electric Vacuum Cleaner Company?

221 A. Oh, about seven and a half years.

Q. What was the first union you ever belonged to?

A. A. F. of L.

Q. When was that?

A. Back in 1907.

Q. 1907?

A. Yes.

Q. What sort of work were you doing at that time?

A. Street car line.

Q. Street car conductor?

A. Motorman?

Q. How many years were you a member of the A. F. of L. then?

A. About seven or eight.

Q. Until about 1914 or '15?

A. Until about 1914 or '15, I believe, when I quit.

Q. And what was the next union you joined?

A. MESA—no, I beg your pardon. I wouldn't say that I did join the A. F. of L., but it actually was the MESA that I really signed up with.

Q. If there is some confusion, I would like to have you explain it.

A. Back in 1934, in the early part—in the early fall, before an organization ever was talked of in the plant, the A. F. of L. officials come in, I don't know how they got in there because I was not interested, but they called
222 a meeting to organize the shop and at that time there were four or five hundred of us attended that meeting.

Q. In the shop?

A. In the Metal Trades Hall. And there was a lot of speech going on, and they finally asked us if we would sign up. Well, there was quite a bit of confusion, and a lot of boys at the hall at the time it was announced that there would be a five-dollar initiation fee and a dollar and seventy-five a month dues, they thought it was too much money. The majority of the boys didn't have enough money

to pay it, so they said, "Give us at least fifty cents down in good faith." I myself didn't have fifty cents. I had to borrow fifteen cents more to make up the fifty cents, and we signed a slip of paper, and in the future after we went back to work we waited to see what was going to be done. Well, there was nothing done for practically six weeks, two months, and then the MESA stepped in.

Q. Then your confusion is due to this thought that you signed a piece of paper at the A. F. of L. headquarters and you were not sure just what that meant; is that true?

A. I didn't know.

Q. You paid fifty cents?

A. Fifty cents.

Q. And thereafter you joined the MESA?

A. MESA.

Q. About two months later?

223 A. Approximately. It was in, I would say, about October or November, 1934.

Q. Near the end of 1934. How long did you belong to the MESA?

A. Well, until 1935, when they dissolved.

Q. During that strike?

A. During that strike.

Q. Have you dropped out of the MESA?

A. Well, I didn't pay no dues any more; never was asked for dues.

Q. There was no formal withdrawal? It just evaporated?

A. Nothing at all; just merely dropped out.

Q. This, I believe, was in July of 1935; is that approximately the end of the strike?

A. No; the end of the strike was in June. We went back to work in June.

Q. Whatever it was, in June of 1935, when the strike ended, did you join any other union?

A. No.

Q. You never joined the A. F. of L.?

A. No, sir.

Q. Were you ever asked to?

A. No, sir. That is up to this year in February.

Q. In other words, in 1935 and all of 1936 and even the first months of 1937, you never belonged to any union?

A. No union at all.

224 Q. You were never asked to join the A. F. of L.?

A. No.

Q. Now, when was the first time you were asked to join the A. F. of L.?

A. Well, that was along about the middle of February, Gordon and Mr. Toth approached me at my bench where I did the inspection work.

Q. Is that Ralph Gordon?

A. I only know him by Gordon; I don't know his first name.

Q. Is that the man who is in the room now?

A. The gentleman here, yes.

Q. All right.

A. And he asked me if I ever signed one of them cards and I told him no, and they handed me one of them cards, and I looked it over and I says, 'How do you expect me to pay this initiation fee here and those dues on sixty-three cents an hour?'' Well, they says to me, they says, ''What kind of work do you do?'' And I says inspection work. And he says, ''Do you handle sketches and read blue prints?'' And I said sure and he says, ''Inspectors at the Apex get as high as seventy-five cents an hour; sign up one of them cards and we will get you seventy-five cents an hour.'' And I replied, ''Get me seventy-five cents an hour and I will sign one of them cards.''

Q. You did not sign the card?

A. I did not sign the card. I put it in my drawer.

225 Q. He did not tell you that you had to?

A. No.

Q. You say that was in February?

A. Along about February.

Q. Did you early in March—were you early in March approached by anybody to join the A. F. of L.?

A. No.

Q. Did you see others approached?

A. Well, Mr. Toth, I guess he was a regular organizer at the plant, and he was going through occasionally prob-

ably every day of two or three days sometimes, and sometimes every other day.

Q. Did you have occasion in the month of March to talk to Mr. Toth?

A. I spoke to him several times.

Q. What was the conversation?

A. Well, it was mostly about why the boys didn't want to sign up.

Q. What was said by him and by you? Can you give us the date?

A. I couldn't exactly give you the date or the conversation because I spoke with him several times.

Q. I would like to place the date a little better than that. You remember the plant closed on March 19th?

A. Yes.

Q. About how long before that? How many days
226 was your first conversation?

A. Oh, I think it was the first week in March, probably two weeks ahead of the trouble.

Q. About March the 5th or 6th?

A. Somewheres in through there.

Q. What did Toth say to you and what did you say to him on any one occasion that you can recall?

A. Well, the occasion that we talked was why the boys don't want to sign up with the A. F. of L.

Q. That is, Mr. Toth said that to you?

A. Yes. Then on another occasion I was inspecting work at one of the men's machines and I guess he was trying to induce him to sign the A. F. of L. and he turned around sideways and he said, "I don't know what the hell is the matter with these fellows that they don't want to sign any cards."

Q. Was he talking to you?

A. He wasn't talking to anyone in particular.

Q. Was it between the two of you?

A. It was between the two of us.

Q. Did you say anything?

A. I said, "Well, the men got a perfect right to do what they want."

Q. You said that?

A. That's all I says.

Q. Is that all the conversation that you remember
227 between yourself and Toth?

A. Yes.

Q. Coming closer to the end of the week, can you remember March the 16th, Tuesday, March the 16th?

A. Yes.

Q. Is there any reason why that stands out in your memory?

A. Well, it does.

Q. What happened?

A. There was an accident case in the factory about a year and a half previous to that day and I was sent down to court by the management.

Q. You were a witness in a case in court?

A. I was witness in a case.

Q. And that Tuesday, March the 16th?

A. March the 16th.

Q. And did you, because of that, miss some time from your work?

A. I did. I was away until about eleven o'clock.

Q. Ordinarily you start work at what time?

A. Well, I started as soon as I got ready—

Q. You didn't hear my question. Ordinarily you started what time?

A. Well, I start in the morning seven-thirty that day.

Q. Oh, you started that day and went down there?

A. At eight-thirty I was sent down to court.

228 Q. You got back?

A. Approximately about ten minutes to eleven, eleven o'clock.

Q. What happened when you got back? What did you see?

A. When I walked into the door, there was quite a bit of confusion in the factory. I happened to look around and I seen about eight or ten people walking around in there, and several of the boys run to me and says, "Did they get you?" And I didn't know for a minute what it was all about, and one of the men particularly says, "Did you sign up yet?" And I says, "No. What's going on?" Well, they

says, "A. F. of L. organizers are down here and they are making everybody sign up."

Q. Who was the one in particular?

A. Joe Kotapish. He was working in the machine at this door.

Q. And he is the one that asked you?

A. Yes.

Q. Go ahead.

A. And I took in the situation at a glance and I went over to my bench and I started getting ready to go to work.

Q. Nobody approached you?

A. Nobody approached me. I happened to look at the other side, I was working at a hand screw machine and the drill press is on the opposite side of the building, and I seen several of the men there with Mr. Paulus walking back and forth from machine to machine.

Q. You say you saw several of the men with Mr. Paulus?

229 A. Yes.

Q. By "several of the men" who do you mean, employees?

A. A. F. of L. organizers.

Q. Several of the organizers with Mr. Paulus?

A. Yes.

Q. Do you know them?

A. I believe Mr. McWeeny was the only one that I could recognize. I don't know the rest. Mr. Toth was there.

Q. You recognized McWeeny and Toth?

A. And Toth. I am not very positive about McWeeny. I was kind of confused myself, but I believe it was.

Q. Do people who work at the plant dress a certain way, they have working clothes?

A. Sure.

Q. So that these men looked as if they were in street clothes?

A. They were dressed with their coats on.

Q. You saw them with George Paulus?

A. Yes. Of course, I didn't hear no conversation, being on the other side of the building, but I seen Mr. Paulus

and I saw Mr. Paulus walk behind a man, stopped at a machine and he nodded for one of the organizers to come over there and sign up.

Mr. Spieth: I object to that.

Trial Examiner Ringer: That would be a conclusion.

Q. All I want you to say is what you saw. You
230 say you saw Paulus go to a man working?

A. Yes.

Q. What did he do?

A. He motioned to one of the organizers to come over there.

Q. Was the organizer handing him a slip of paper?

A. They were signing it and talking to different individuals, and walked up to the men who were working.

Q. He sort of beckoned to come over?

A. He sort of nodded.

Q. Did you see him go over?

A. Yes.

Q. What did you see?

A. I seen this individual person talking to this man, talking at the machine.

Q. Of course, you did not hear what he said?

A. No.

Q. Did he hand him something?

A. I couldn't see whether he handed him anything.

Q. All you saw was Paulus beckoning him over and he came over and you saw them talking?

A. Yes.

Q. Anything else that you saw?

A. Lunch hour was a bad time, eleven-thirty. Things kind of quieted down in the afternoon. Mr. Toth was the only one that come in the afternoon.

231 Q. Who?

A. Toth. So I went about my business through the punch press machine and my hand screw machines in the front end, and the boys were kind of confused. They didn't know what to do.

Q. How do you know that? Did anybody say anything to you?

A. Yes; they were saying, "What's the matter with

the C. I. O.? Do we have to sign these cards?"

Q. People said that to you in the plant. All right, go ahead.

A. I said, "Well, that's up to you boys." I says. "If you want to hold your jobs, I suppose that's what will have to be done." I said, "No use of questioning me I am not your master," I says.

Q. That was the answer you made?

A. To the individuals that asked me. I said, "You have your own mind; you ought to know what you're doing; you're old enough."

Q. Did you at that time have a conversation with Mr. Lawrence?

A. Yes; I was speaking with Mr. Lawrence. He asked me what I thought of the situation and I says I didn't like it.

Q. What else was said?

A. The conversation went through, a little bit of a talk went on back and forth, and Mr. Lawrence said he don't like the situation and he suggested to me, he says, "If you will pass the word along that we can have a C. I. O. meeting," he says, "I'll see to it that we get a C. I. O.
232 representative to hold a meeting," and I said, "O. K. with me." So I passed the word along.

Q. In what manner?

A. As I was going to each individual machine.

Q. You told them there would be a C. I. O. meeting?

A. I says we are going to try to get hold of the C. I. O. here if we can hold a meeting.

Q. This was on March 16th, Tuesday?

A. Yes.

Q. Did you ever hear any C. I. O. mentioned at that plant before that date?

A. Not before that day.

Q. That was the first time the C. I. O. was mentioned in the plant?

A. Yes.

Q. That was Tuesday, March the 16th?

A. Yes.

Q. And that was a talk between you and Lawrence?

A. Yes.

Q. Anyone else that you remember that day?

A. Well, there was nothing occurred the rest of that day but the word was passed along, that is on Wednesday, that there would be a C. I. O. meeting at the Old Postoffice at 147th and St. Clair after working hours.

Q. Wednesday, March the 17th?

233 A. Yes.

Q. Who told you there would be a C. I. O. meeting?

A. Mr. Lawrence passed the word to me.

Q. And you circulated it?

A. Then the propaganda was started through the factory.

Q. Did you have a meeting that day?

A. We did.

Q. When and where was it?

A. In the Old Postoffice at 147th and St. Clair.

Q. And was it Wednesday?

A. Yes.

Q. About what time?

A. About four-fiffeen.

Q. After the first shift?

A. After the first shift?

Q. And about how many of the employees of the Electric Vacuum Cleaner Company were there?

A. Well, I judge there was about a hundred.

Q. Let me ask you this: As a machine shop inspector, how many people's work would you inspect during the course of your work?

A. That all depends what the company wants put on to you. I have had approximately about ninety men under me.

Q. So that during the period of time you have contacted ninety men or else done some work on ninety men's machines?

234 A. Yes.

Q. What outsider was at the C. I. O. meeting?

A. I believe Bert Cochrane took charge of that first meeting.

Q. I suppose that was an organizational meeting. I am not interested in the details.

A. It was for them.

Q. What happened after that? Did you go to work the next day?

A. Thursday, at this meeting at Wednesday, the boys were asked to take application blanks into the factory and distribute them. Thursday morning the applications started going through the factory. In fact, we couldn't get them fast enough to spread them. The A. F. of L. officials got a hold of it and in the afternoon they come over there and, of course, everything was a disruption. They started calling the men up in the office and going to fire them here and there and going to discharge the men for C. I. O. activities.

Mr. Spieth: I object to that.

Trial Examiner Ringer: Let it go out.

Mr. Lodish: That is a conclusion. In a court of law you have to take more time and give details.

Q. (By Mr. Lodish) Did you see people leaving their machines?

A. You mean—

Q. You said something about going to the office. Where did you get that idea?

A. They were called up in the office.

235 Q. Did you see them being called away?

A. Well, I didn't see them being called, but they were going from their machine and I would inquire where they were going and they said they were going up to the office.

Q. You asked the men. Some of these men's work there you had to inspect?

A. Yes.

Q. And as they left the machine they said they were called to the office?

A. Yes.

Q. And, of course, it was during working hours?

A. Yes.

Q. How long would these individuals stay away; a great length of time or a short length of time?

A. Some of them would be up there about thirty minutes, something like that, and the others would be as long as twenty minutes, from what I could see.

Q. What did these people say to you when they got back, if anything?

A. Well, they did say that they either got the sign or they are going to be discharged. That's what they told us.

Mr. Spieth: I object to that. It doesn't say who said that or anything about it.

Q. (By Mr. Lodish) Do you remember any individual who told you that?

236 A. Well, yes; Ramsey told me that and Boyse told me personally that the whole automatic crew is discharged for not signing an A. F. of L. card.

Q. Anybody else besides Boyse and Ramsey?

A. No.

Q. Did they tell you who was in the office?

A. They did specify that Lenahan was up there, but I didn't get nobody else's name.

Q. Did Ramsey and Boyse and others tell you that Lenahan was in the office?

A. Yes.

Q. Did Ramsey tell you that he was fired?

A. He came down with two cards and he told me personally, he says, "It's all over with, Ed; I got my time."

Q. What happened then when Ramsey told you that?

A. Well, after that, it seemed by the conversation through the machine shop that the boys all got to start a little propaganda around that if Ramsey gets fired they are going to sit down.

Q. You heard that being said?

A. I heard that being said.

Q. Did they stop work?

A. They did, when Ramsey come down and said that he was discharged the men actually quit working.

Q. What time was this when they decided to quit work?

A. I would say it was about two forty-five, in be-

237 tween two forty-five and three o'clock.

Q. Was the power shut off?

A. No. I told the boys not to shut the power off. I said that would be against the rules of the company. "If you want to sit, sit; if the management wants the power shut off, it's up to them." Who ordered the power shut off, I don't know.

Q. The power was shut off?

A. The power was running while we were sitting and I imagine that Sam Wagner issued orders to have the power shut off.

Q. You stopped work. About how long after you stopped work was the power shut off?

A. I would say approximately half an hour later.

Q. Some time a little after two o'clock you stopped working, and about there or after the power was shut off?

A. About a quarter after two it was shut off.

Q. Did any of the officers or supervisors of the company come down during this period when you stopped work?

A. Yes; after the power was shut off, Mr. Paulus come down.

Q. George Paulus?

A. Yes. There were two or three of the automatics standing right on the outside there. He come down to one of them and he patted him on the back.

Q. Who was that?

A. I think it was Ed Cawley.

Q. And he is what you call one of the automatics?

238 A. Yes.

Q. That is, he worked in the automatic machine department?

A. Yes.

Q. And who else?

A. John Cromie.

Q. Who is the other?

A. Green. They worked right at that machine.

Q. You say Paulus patted him on the back?

A. He says, "Forget about it." He says, "Go home and come back in the morning and go to work."

Q. Do you know what he was referring to when he

said, "Forget about it"?

A. Well, forget about being discharged, and then he walked over to the punch presses, I found him over there, and Ramsey was talking to the foreman Jake Gassner, he was getting ready to go home, and Mr. Paulus walked up to Ramsey and patted him on the back and he says, "Forget about it." He says, "You're not fired," he says, "Come back in the morning and go to work." And he also issued instructions to Jake Gassner that they were to go home and come back in the morning, although the morning was Saturday and, you understand, we don't work on Saturdays. There was a conversation to come back in the morning.

Q. Are you talking about the afternoon of the sit-down strike? Are you sure that was the day before Saturday?

A. That Friday—that's Thursday, that's Thurs-
240 day that we sat down.

Q. You are talking about the fact that that day overlapped?

A. That's what confused me, Thursday to Friday.

Q. Actually two days, it went from Thursday to Friday?

A. Thursday to Friday.

Q. When George Paulus came back and patted Cawley on the back and Ramsey on the back, was that Thursday or Friday?

A. That was Thursday when we sat down.

Q. Cawley and these other men that you call automatics, you testified somebody told you they had all been fired, the whole group?

A. Yes; Boyse come down.

Q. You said Paulus instructed Gassner to tell all the boys to go home and come back in the morning?

A. Yes.

Q. Did Gassner do that?

A. He started around but it didn't do him any good, because the boys made up their minds right then and there they were going to sit it right out.

Q. They sat there and stayed all night?

A. Yes.

Q. You were with them?

A. I was with them.

Q. Did any of the officials of the company come back at all and go through the plant during the course of the night?

241 A. Well, yes; Mr. Paulus come through about nine, or a little better, with Mr. Wagner, and he just strolled up and down through the factory.

Q. Did he do anything?

A. He just talked to the boys as they were playing cards.

Q. They were playing cards?

A. Yes; fooled around.

Q. You don't know what he said?

A. No.

Q. Did anybody else other than the employees walk through the plant that night than Paulus and Wagner?

A. Well, yes, there was a little bit of discussion between the boys in the plating room.

Q. Yes?

A. I don't know what it was all about, but anyway some of the boys went back and they wanted the platers to sit down with us, although I did know that they belonged to the A. F. of L.

Q. That is the platers?

A. Yes. And Mr. Muelhoffer and Mr. Rinehart come through there and they got into an argument here with a few of the boys at the clock where the entrance is there at the front of the building, and somebody come up to me and says that there was some trouble back there, that Mr. Muelhoffer and Rinehart was there, so I walked back, and Muelhoffer says, "We want you to keep the hell away from our men," he says, "Them are our men," he

242 says, "They're going to keep on working." And I turned to Mr. Rinehart and I told him—several of the boys got back there and they asked the boys in the plating room to sit down, and I walked back there afterwards and I asked Chester Wilson what he thought about the situation, and he says, well, his orders was to work, and I told the boys, "They are under the A. F. of L. and you just let them go on with their work. We will not molest them at all."

Q. Who is Chester Wilson?

A. He is one of the welders working on the night shift.

Q. Was he in the plating room?

A. He was in the plating room at the time of the sit-down.

Q. You told some of the boys in your group not to bother them?

A. Not to molest them at all. They belonged to the A. F. of L.; let them go on and work.

Q. Is that all, and did they quiet down?

A. Everything quieted down after that.

Q. Coming now to the following morning, which was March 19th, when daylight came you still were sitting there?

A. We were still sitting there.

Q. What happened about opening time that morning?

A. Well, all the employees come in to work and it seemed that nobody was working and when the whistle blew at seven-thirty I saw Mr. McKinnon come down the stairway. We walked through the machine shop to
243 the outside door, and he said, "Well, are you fellows going to go to work? If you don't want to work," he says, "we'll get somebody in here that is going to work." He walked out of there and I guess he had about thirty-five or forty men whom he brought in to work, and as they started coming—

Q. Were they employees?

A. No; they were not. And as they started to come in the door, somebody let out a yell, "Don't let them in."

Q. Yes?

A. And they were barred from coming in.

Q. Without going into too great details, was a fight started?

A. A fight started right then and there.

Q. Stuff thrown?

A. Yes; there was bricks and everything coming from the outside of the factory.

Q. What did you do then when the fight started?

A. When the fight started, I tried to get somebody that would go on the outside and get in touch with Walter

Scott.

Q. Who is he?

A. Walter Scott, he was an organizer, I believe, or financial secretary for the Radio Workers.

Q. C. I. O. group?

A. C. I. O.

Q. All right.

A. I couldn't get anybody to go, so I went out on
244 my own hook and I tried to contact him at his home, and his wife told me that he was down in Chief Corlett's office.

Q. Yes?

A. I tried to contact him in Chief Corlett's office, and they told me that they were on the way down to the factory, so I started back for the factory and I couldn't get in, so I went for home.

Q. Did you see Corlett and Scott at the factory?

A. No, I didn't.

Q. There was a crowd around there; is that why you couldn't get in?

A. The crowd that Mr. McKinnon had there outside of the factory. There was people standing on the sidewalk wondering what was going on.

Q. You decided you couldn't get in, so you went home?

A. I went home.

Q. You didn't know what happened after that?

A. After that, I didn't know what happened.

Q. This was Friday. What time did you leave home and go back to the plant or anybody else in connection with this matter?

A. I didn't go back to the plant. My father-in-law passed away and we were burying him that afternoon.

Q. Friday afternoon?

A. Yes. That's why I was anxious to get out of
245 there and go to the funeral.

Q. Yes?

A. After the funeral, why I went to the Old Postoffice on St. Clair Avenue and there was a meeting called there, but I got there too late; the meeting was all over.

Q. What time did you get there?

A. Oh, I got there it must have been about a quarter to five.

Q. And the meeting had already—was finished up?

A. Already adjourned. They were all coming out of the doors.

Q. What was that meeting—a C. I. O. meeting?

A. A C. I. O. meeting.

Q. What did you find out that the meeting had done with reference to you?

A. Well, I found out that they appointed me as committeeman for the machine shop and Chairman of the Local.

Q. And you, from then on, were Chairman of the Local?

A. Yes.

Q. That is, you were President of Local 720 of the United Electrical and Radio Workers?

A. Yes.

Q. Are you President now?

A. I still am.

Q. That was Friday, March 19th. Did you attend a meeting at Arnold Hall the following Friday?

246 A. Yes, I did.

Q. What time was that?

A. I think that was called for about five o'clock in the evening.

Q. That was Friday, March the 26th?

A. Somewhere in that neighborhood.

Q. And that is the Friday before?

A. After the trouble we had at the factory.

Q. Where was this meeting?

A. At Arnold Hall.

Q. And how many people were there about?

A. From where I stood the hall was pretty well crowded, I would say there was about six hundred people in there.

Mr. Spieth: I make my same objection.

Trial Examiner Ringer: I have forgotten what your ground was now. Will you state that briefly?

Mr. Spieth: My ground was that I don't see that they can bind anybody by saying that there was a crowd in the

hall with five or six hundred people there. It is physically impossible for any man to tell whether they were all Electric Vacuum Cleaner employees or whether they decided by being present that they would be C. I. O. or anything else.

Trial Examiner Ringer: It goes to the weight. I will overrule it.

Q. (By Mr. Lodish) Did you recognize any of
247 those people as employees of the Electric Vacuum Cleaner Company?

A. Quite a few of them.

Q. You did recognize them?

A. I recognized them, that they were employees at the plant.

Q. Who was there other than employees, I mean officials, who ran the meeting?

A. Well, Lawrence was there, the financial secretary, and Ray Hoff was there.

Q. And Sam Griff?

A. Yes; Sam Griff was there and I believe John Soltis was there.

Q. As President of this Local, did you have any cards or signatures with your name or anything of that kind?

A. Well, the purpose of the meeting was called—

Mr. Orgill: We object, if the Court please.

Trial Examiner Ringer: Sustained.

Q. (By Mr. Lodish) Did you have a list of applications with you?

A. We had a list of names, yes, off the applications that were typed off the application blanks.

Q. That is, somebody made that list. Who typed it?

A. Our Financial Secretary typed it.

Q. In other words, you had a list of names taken from application blanks which have been circulated in the last ten days?

248 A. Yes.

Q. You testified on March the 16th or 17th there was a C. I. O. meeting?

A. Yes, sir.

Q. How many names did you have?

Mr. Spieth: I object. I think the best evidence of that would be the list of the cards.

Q. (By Mr. Lodish) Do you have that list?

A. We did have the list. I don't know whether we have them now yet or not.

Q. The list that you testified about, was that handled by Mr. Griff?

A. Yes, I believe it was.

Mr. Lodish: I will handle that with another witness.

Q. (By Mr. Lodish) Did you do anything about these names? Did you make any speeches or read any names aloud? What did you do at the meeting?

A. I made an announcement at the meeting that the list of names was there for the purpose of them sending in their resignations to the A. F. of L. and as I read the names off they were to answer yes or no.

Q. Go ahead.

A. And then I read the names off and as they answered I checked them whether they wished to send their resignation or whether they did not. Those that did not ap-
249 pear at the hall were not checked at all.

Q. So you made a number of checks depending on the yesses that you got?

A. Yes, sir.

Q. Can you tell us about how many the total was?

A. The next day, yes. I couldn't say exactly what it was, but it was in the neighborhood of about four hundred and forty-five.

Mr. Orgill: We object.

Trial Examiner Ringer: Overruled.

Mr. Spieth: I make an objection to that.

Mr. Orgill: He said they had a check-off that is the best evidence. There is no showing that they cannot produce it. I do not see why we have to have secondary evidence.

Trial Examiner Ringer: We are not bound by the rules. They said they are going to bring it in.

Mr. Lodish: I stated to the Examiner that we are going to bring it in with another witness.

Q. (By Mr. Lodish) Did I ask you whether you earned

any money since?

A. Yes.

Q. Did you try to get any work anywhere?

A. Yes.

Q. Where did you try?

A. Down at the White Motor.

250 Q. You didn't get a job?

A. Got my application in.

Q. After March 26th, were there any meetings between the C. I. O. members, of which you were one, and the A. F. of L. representative?

A. Yes; there was sort of a peace conference held.

Q. Where was this and when?

A. This was held at the Hollenden Hotel, and I believe it was March 23rd the first one, on a Tuesday.

Q. And that was before the March 26th meeting?

A. Yes; that was held before the March 26th meeting. We called our members.

Q. You say the first one; how many were there of these peace meetings?

A. There were three that I know of.

Q. Three that you attended?

A. I attended two.

Q. The two that you attended, when were they?

A. One was on the 23rd and the other was on the 7th of April, on a Wednesday.

Q. After the plant opened?

A. After the plant opened, we had one at the Hollenden.

Q. The first meeting, that was the 23rd. at the Hollenden, who was there?

A. Well, I don't just remember everybody who
251 was there, but Mr. Lenahan was there and Mr. Hanna was there and Mr. Gill was there and Mr. Soltis was there and Mr. Peppercorn there, and I believe Coleman Taylor was there and Sam Griff was there and Howard Lawrence was there, and I think Louie Young was there also.

Q. Without getting into the details of that, as you term the peace discussion, was any conclusion come to at that

meeting?

A. None at all.

Q. Just talk?

A. It was just Mr. Peppercorn's idea to try to get peace between the two organizations.

Q. Anything said about a closed shop then?

A. Well, it wasn't mentioned at that meeting, about a closed shop. It was just merely references to what was taking place at the Electric Vacuum Cleaner Company.

Q. Incidentally, had you ever heard of the closed shop before that meeting at the plant?

A. No.

Q. Nobody ever said anything to you about a closed shop?

A. Yes.

Q. When was the next peace meeting that you attended?

A. There was another one that second week, they made arrangements to hold them every Tuesday, and the second one that I attended, that would have been the third
252 one, that was on the seventh.

Q. April the 7th. I will ask you about that later. Did you do anything on April the 5th about getting back to work?

A. Well, when I noticed the advertisement in the newspaper to go back to work on the 5th, so I went down there to see what it is all about.

Q. You went to the plant?

A. Went to the plant to see if I can get back in to work.

Q. What happened?

A. When I seen what was going on around there, so I decided that the best thing to do was to get away from the place, and I instructed everybody down the line that they should keep away from the place and keep out of trouble and everybody to go home.

Q. Was there a fight then?

A. There was.

Q. You went home?

A. I didn't go home. I went to the office at 152nd and St. Clair.

Q. And then the next thing was this meeting Wednesday night, April the 7th at the Hollenden?

A. Yes.

Q. Who was at that meeting?

A. Well, Mr. Lenahan was there and McWeeny was there and Mr. Hanna was there and I don't know the
253 other A. F. of L. officials.

Q. Who was there representing your group?

A. Our group was Mr. Soltis and Mr. Cochrane and James Paskoe and Howard Lawrence and myself, and I don't remember who else was there.

Q. Any outsiders?

A. Yes. By request, as I said, Mr. Lind was asked to come in.

Q. Ralph Lind?

A. Yes.

Q. Without getting into too much detail—anybody there representing the company, any officer of the company?

A. I don't remember whether there was or not.

Q. At least, you don't remember anybody being there?

A. I don't remember.

Q. So that, as far as your recollection is concerned, there were representatives of the A. F. of L. and C. I. O. and Mr. Lind?

A. That's all I could recognize.

Q. Without getting into too much detail of that meeting, was there any conclusion reached from the discussions?

A. Well, there was a conclusion reached that we were to settle peaceably and send all the people back to work by signing A. F. of L. cards.

Q. That is, this peace conference resulted in a conclusion that people would get back to work if they join
254 the A. F. of L.?

A. Yes; we tried to get them back to work as quick as we could.

Q. Anything said then about the closed shop?

A. Yes; there was a remark made and I think it was made by Mr. Lenahan, he says that they had a closed shop in the place, and there was a little discussion there about

whether it was a closed shop, and they made the remark that orally they had a closed shop at the plant.

Q. That was April the 7th?

A. Yes.

Q. Is that the first time you ever heard a closed shop referred to in connection with the Electric Vacuum Cleaner Company?

A. First time I ever heard it.

Q. After leaving that meeting, with the understanding that you talked about, what did you do the next day, April the 8th, Thursday?

A. We told the rank and file of our organization to be at the Postoffice the next morning for another meeting and we would let them know the details of this conference that we had at the Hollenden.

Q. Briefly, what did you tell them?

A. Just simply told them that the agreement was made that they all go back to work, they could even start that day if they wished to go down there and get a signature
255 from the A. F. of L. they could go back to work, but some of them put a motion on the floor to delay it until Monday and that would be on the 12th. Some did go back for the rest of the week, and the majority hung out until Monday.

Q. That is, a group decided to go back together?

A. Monday.

Q. That is Monday, April 12?

A. Yes.

Q. Did you personally try to get back to work?

A. I did.

Q. What did you do?

A. On the 12th I went down to the gate and there was confusion there, and Mr. Toth was at the gate and we were grouped up around there and he says nobody else can get in there now, we were all filled up, so with that understanding we left the plant.

Q. By "we" whom do you mean?

A. There was about thirty or forty of us in a group.

Q. Of the former employees?

A. Of the former employees.

Q. And then what did you do after with reference to attempting to go back to work?

A. I went down to the A. F. of L. headquarters, and that was on the 16th, on a Friday, and I got there about eleven o'clock and there was no one around.

256 Q. And that was in the morning?

A. About eleven o'clock in the morning.

Q. Did you wait there?

A. I waited there for a couple of hours, and I asked about Mr. Toth and they said he is out and they didn't know what time he'll be back, so I left the place.

Q. Did you ask anybody for advice about how you should get back to work and what to do?

Mr. Spieth: I object.

Trial Examiner Ringer: Overruled.

Q. Whom did you ask?

A. I asked Mr. Griff on this occasion that I really didn't want to go to the A. F. of L. headquarters and get my card, and I asked Mr. Griff to call up Mr. McWeeny to see if I couldn't receive my card at the gate.

Q. Did he call up?

A. He did. And McWeeny told him—

Mr. Spieth: I object.

Q. (By Mr. Lodish) Did you hear what McWeeny said?

A. No.

Q. You just heard what Mr. Griff said?

A. Yes.

Q. Tell us what Mr. Griff said.

A. Mr. Griff said that he made arrangements with Mr. McWeeny to have my card at the gate, Monday, April the 12th.

257 Q. Can you tell me what the conversation was?

A. He just asked him that the President of the Local 720 C. I. O. would like to request Mr. McWeeny or at the headquarters somebody if they would have my card at the gate Monday morning.

Q. To save you the trouble?

A. To save me the trouble of going down there.

Q. That is what you heard Mr. Griff say?

A. Yes.

Q. He told you that it would be down there?

A. Yes.

Mr. Lodish: That is all.

Mr. Wachtel: No cross-examination.

Trial Examiner Ringer: By anyone?

Mr. Spieth: The Respondent has no cross-examination.

Trial Examiner Ringer: Call the next witness.

(Thereupon a short recess was had.)

257 Trial Examiner Ringer: Call the next witness.

Mr. Lodish: Mr. Griff.

Mr. Griff: I have not been sworn.

SAM H. GRIFF, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Lodish) Will you state your name and address, please?

A. Sam H. Griff, 610 Public Square Building, Cleveland, Ohio.

Q. And your occupation?

A. Attorney-at-law.

Q. How long have you been an attorney?

A. Ten years.

Q. Practicing all that time in Cleveland?

A. Yes.

Q. As attorney are you interested—or associated with or connected with the C. I. O. or any of its branches?

A. Yes, I am.

Q. Did you have any business in connection with the United Electrical and Radio Workers, Local 720?

A. I did.

Q. In that connection, did you advise and work with them in regard to the situation at the Electric Vacuum Cleaner Company?

A. I did.

258 Q. What was your first contact in this matter? When did it begin?

A. On or about March 16th or 17th, 1937.

Q. Who was your first contact with?

A. Coleman Taylor.

Q. Very briefly, Mr. Griff, and merely to make it a smooth story, what was it that he wanted of you?

A. Well—

Q. What did he say?

A. Coleman Taylor came to my office and told me that he was connected—

Mr. Orgill: We object to what he told him, and while I am on the question, your Honor, I want to raise the question of the anomalous situation in which we now find ourselves. I understand from my experience in federal proceedings that I have not known of a man appearing as a counsel and witness at the same time. I am not so certain that it is not an abridgment of the rules as far as this district is concerned, but I know in Chicago and New York and Pittsburgh the rule prevails. It is extraordinary to me and, for the purpose of the record, I am objecting to it.

Mr. Lodish: I cannot see anything extraordinary about it, a man happening to be counsel and being a witness. As a matter of fact, the reason that he is a witness is because he was counsel for them.

259 Mr. Orgill: He would have to withdraw as counsel before the proceeding started.

Trial Examiner Ringer: Of course, that is the rule in some federal courts, and I do not know whether it is the rule in some state courts. It is not an absolute rule. Of course, this is a Board matter and is not subject to the same rules. Anything that is indicated from it goes to the weight of his testimony. I will overrule the objection.

A. I learned that Mr. Taylor was connected with the United Electrical and Radio Workers as an organizer, I believe, and I learned further that he is having some organizing duties with the United Electrical Workers—I withdraw that. Certain requests for his services in the City of Cleveland were made, nothing specific, at that time.

Q. Did he take up the question of advising the people with reference to the Electric Vacuum Cleaner Company

at that time?

A. To my knowledge, no.

Q. What I meant to ask you, your first connection with anything that concerned the Electric Vacuum Cleaner Company?

A. Well, the first was from James Pascoe.

Q. What was the date, if you remember?

A. Well, it would be some time after March 19th.

260 Q. Briefly, is it fair to say that he wanted your help as a lawyer in certain problems that had arisen in his capacity as an organizer?

A. That is correct.

Q. Did you thereafter advise with him and assist him?

A. I did.

Q. And after that did you have any meetings with employees of the Electric Vacuum Cleaner Company that he was attempting to organize?

A. I did.

Q. When was the first of such meetings?

A. Well, I don't recall, but it was a few days after March 19th, groups of committees would come to my office at irregular intervals and we would more or less discuss the various problems and would advise them accordingly.

Q. And you testified that you were present at a meeting on March 26th, Friday, March 26th?

A. It was on a Friday, but I don't believe it was March 26th. Well, it was, I believe, the last week in March.

Q. The last Friday in March?

A. That is right.

Q. Was that the first meeting that you had with the group as a group?

A. That is right.

Q. And you were there as an attorney?

261 A. That is correct.

Q. Will you tell us what you did?

A. Mr. Pascoe and I believe some of the committee consisting of Koutnik, Lawrance, had been to my office in the morning, and I was informed that there would be this

meeting this Sunday afternoon at two o'clock for the purpose of conducting a legal resignation of employees of the Electric Vacuum Cleaner Company who desired to terminate their then existing membership if any and to be officially recognized as members of Local 720 of the United Electrical and Radio Workers, and I was consulted as to what was the best method of doing that.

Mr. Orgill: We ask that that answer go out.

Trial Examiner Ringer: All of it?

Mr. Orgill: Yes.

Trial Examiner Ringer: Overruled.

Mr. Orgill: Exception.

Mr. Spieth: I object to the answer, too, your Honor. He testified about a conference with Mr. Pascoe for the purpose of calling a meeting. I do not see where it is competent so far as the issues in this case are concerned.

Trial Examiner Ringer: It seems to me it is harmless.

Q. (By Mr. Lodish) Mr. Pascoe wanted your help in finding out how people could resign from one union when they joined another; that is the essence of your testimony.

A. That is correct.

262 Q. And in connection with that you had this meeting of March 26th.

A. Yes; we had a meeting in my office before.

Q. You have already testified to that.

A. The meeting was called for two o'clock that afternoon for that purpose, and I was asked to come down and assist to carry out that purpose.

Q. Now, what did you do to carry out that purpose? What was your procedure?

A. I inquired, I believe, of Mr. Pascoe and some of the other people as to whether they had any rules and regulations of some of the then existing membership employees and nobody seemed to have any. And I suggested that the purpose of the meeting should be explained to the body, and I was given the floor to explain that, and I told the body—

Mr. Orgill: I object to what he told the body.

Trial Examiner Ringer: Overruled.

A. I told the body that those who desired to withdraw

their membership can so affirm either by themselves or they can designate one individual to do it for them, and I found there had been a list prepared of names.

Q. (By Mr. Lodish) Do you have that list? Was it given to you?

A. Yes; I was furnished a copy of those names.

Q. Do you have that copy here?

263 A. Yes; I do. Before we get to the list, Mr. Lodish, may I say this: A motion was made and seconded and regularly passed and the substance of that motion was—

Mr. Spieth: Your Honor, at this time I ask was there any record kept of any minutes of these meetings that you are testifying about?

The Witness: My own notes.

Mr. Spieth: But you have no official record?

The Witness: I understand there was a temporary secretary, I believe there was, but I have my own personal notes.

Mr. Spieth: Well, was there any official notes of this meeting?

The Witness: As far as I know, that was of no concern of mine. I don't know.

Mr. Spieth: I think it would be our concern if he is going to testify as to the motion, as to what motions were passed and so forth, and if there is an official record, of this meeting, why that would be the best evidence.

Trial Examiner Ringer: Are you objecting to his statement then?

Mr. Spieth: Yes.

Mr. Woodle: I join in that objection.

Trial Examiner Ringer: I will sustain that.

Mr. Lodish: We will ask that it be marked for identification as Board's Exhibit No. 16.

264 (Board's Exhibit No. 15 marked for identification.)

Q. (By Mr. Lodish) I hand you what has been marked Board's Exhibit No. 16 and ask you what that is?

Mr. Orgill: We object. That instrument I assume will speak for itself.

Trial Examiner Ringer: It is a technical objection.

Mr. Orgill: It may be technical, but it is endorsed by the best authorities.

Trial Examiner Ringer: It is overruled.

A. This is a list of the names that were called out at the meeting where I was present with those employees, those people present, who said that they desired to resign from the then existing affiliation.

Q. (By Mr. Lodish) Who called the names out?

A. Mr. Lawrence, I believe.

Q. What did you do in connection with that?

A. Every name that was called I checked.

Q. And that is the same list?

A. That's right.

Q. And was this procedure followed by you as attorney for this group?

A. That is correct.

Q. Do you know how many names there are?

A. Approximately five hundred and twenty-five.

Q. What did you do with this list? Did you

265 present it to anybody?

A. No; it was voted by the body that Mr. Koutnik—

Mr. Spieth: I object to what was voted by the body again.

Trial Examiner Ringer: Sustained. What was done?

A. An affidavit with these names attached, and affirmed by Mr. Edward Koutnik, President of Local 720 of the United Electrical and Radio Workers of America.

Q. (By Mr. Lodish) I will now hand you what has been marked for identification as Board's Exhibit No. 17 and ask you if you have ever seen it before?

A. Yes; I drew it.

Q. That is your signature?

A. It is.

Q. And is that Mr. Koutnik's signature?

A. It is.

Q. You performed this particular function as a duly authorized Notary Public of the State of Ohio?

A. I did.

Q. And this affidavit is just referred to?

A. That's right.

Q. Was Board's Exhibit 17 attached to Board's Exhibit 16?

A. Yes; it was.

Q. It has been torn off?

A. That's right.

Q. Now, what was done with this document?

266 A. Board's Exhibit 16 and 17?

Q. Did you just receive this exhibit from my files?

A. I don't know where it came from, but I know I turned it over to the offices of the Local.

Q. Oh, I see. After you prepared this, you turned it over to who?

A. Koutnik, I believe had it, or Pascoe; I don't recall.

Q. There was nothing done with it?

Mr. Orgill: I object.

Mr. Woodle: I object.

A. On my advice.

Trial Examiner Ringer: Sustained.

Q. (By Mr. Lodish) You prepared this for a purpose, didn't you, as you testified?

A. Yes.

Q. Did anything occur that, in your opinion, made this work unnecessary?

Mr. Orgill: I object.

Mr. Spieth: I object.

Trial Examiner Ringer: Overruled.

Mr. Orgill: Exception.

A. I cannot answer that yes or no.

Q. (By Mr. Lodish) What was it that happened that led to your doing nothing with this list?

267 A. Advertisements in the newspapers on or about June—or rather April 3rd, I believe, 4th and 5th.

Q. You are referring to the advertisements that advised that the plant would be opened April 5th to those who joined the A. F. of L. or signed cards?

A. I am referring to another advertisement.

Q. Do you have a copy of it?

A. No, I have not; but I recall its contents vividly.

Q. You have no copy of it?

A. No; I have not.

Q. As far as you know, there is none available to you at the moment?

A. No; there is not, but I can get it.

Q. What is your recollection of it?

Mr. Orgill: We object.

Mr. Spieth: He said he can get one.

Q. (By Mr. Lodish) Do you have one in your office?

A. No; I do not, but it appeared in the papers and I recall the contents vividly.

Q. What is the date of that paper, do you remember?

A. I believe it appeared on Sunday.

Q. April the 4th?

A. April the 4th.

Mr. Lodish: Well, Mr. Examiner, I think this man can testify what he remembers?

Trial Examiner Ringer: I don't think there has
268 been any question as to that.

Mr. Lodish: Well, there is an objection when I ask for it.

Mr. Spieth: I object. He says that he can get a copy of this and he will produce it. That is the best evidence as against his recollection. I would like to see the copy.

Trial Examiner Ringer: Well, to move things along, I am going to overrule the objection. Let him tell his recollection of the contents. If it is not correct, the paper can be gotten in. You will bring it in anyway?

Mr. Lodish: I will instruct the witness to bring it in.

Mr. Spieth: It should be here if he produces it.

Trial Examiner Ringer: Overruled, with the understanding that the original will be produced and entered in evidence.

A. I saw an advertisement under the sponsorship of the Cleveland Federation, I believe; "Notice to all business agents that they be present at a fixed date in reference to the opening of the Premier Electric Plant."

Q. (By Mr. Lodish) You say at a fixed date; you mean

you don't remember the date?

A. I believe it was called for that Sunday at Metal Trades Hall, April the 4th.

Q. You will attempt to get that?

A. Yes, I will.

Mr. Lodish: At this time, Mr. Examiner, I offer
269 Board's Exhibits 16 and 17.

Mr. Orgill: To which I object.

Mr. Woodle: We object specifically to Exhibit No. 17.

Mr. Wachtel: And 16.

Trial Examiner Ringer: Each overruled. Admitted.

Mr. Speith: I would like to make my objection to that as well, your Honor. Nothing was ever done with it, according to the witness' testimony.

Trial Examiner Ringer: Overruled.

Mr. Orgill: Is that a ruling also as to the so-called affidavit?

Trial Examiner Ringer: Yes; it admits both of them.

Mr. Orgill: I want to call your Honor's attention to the fact that it is not in the proper form and there is nothing here to show that this man is a Notary except the typewritten statement. There is a provision under our statute to verify a document of that kind. I submit that those rules ought to be complied with. I don't know whether he is a Notary or not.

Trial Examiner Ringer: Let me see the exhibits.

(Board's Exhibits Nos. 16 and 17 handed to Examiner.)

Mr. Woodle: I would like to add that one particular ground of objection is the fact that the exhibit is apparently for the purpose of proving authority of a representative to do something where the people who gave him the authority have not testified, and that is hardly a proper way of
270 proving anybody's authority.

Mr. Lodish: I would like to be heard for a moment, Mr. Examiner.

Trial Examiner Ringer: I will be glad to hear from you. Before you say anything, I withdraw my ruling on the offiers admitting Board's Exhibit No. 16. Now, your objection has been made a part to Exhibit No. 17, the affidavits. Proceed, Mr. Lodish.

Mr. Lodish: If I may be permitted to use a figure of speech and compare it to a building with several entrances and there are correct ways of getting in and incorrect. I can acknowledge objections made to getting evidence in certain ways and saying that that is a better way than the other way, but when people block up both entrances in the street I can see neither justice nor fairness. There was a man on the stand a little while ago, and I asked him if he had joined the C. I. O. and he said yes, and I asked him if he dropped out of the C. I. O., yes or no, and he said he was confused, and I asked him, "What did you do," and he said, "I got up and said yes," and somebody asked a question and there were objections from the other sides of the table, and they asked, "Is there a list?" "If there is a list, it ought to be here; that is the way to prove it." And I said, "All right, I will make it with another witness, with Mr. Griff." Now, when I get the records in, that is

271 not the way to prove it, bring the affidavits. I submit, Mr. Examiner, we just cannot prove our case that way, whether it is a good affidavit or a bad affidavit. It is one of the events during the period of time and whatever it may be worth I don't know. Perhaps it does not bind the company and perhaps it binds the Federation or only the individual employees, but it certainly in my mind is admissible as one of the actions in this entire proceeding. As a matter of fact, if it is not allowed in, it would leave a gaping hole in the line of testimony and activities that occurred.

Mr. Wachtel: We understand that the rules of evidence are not strictly followed. We admit that Mr. Lodish has the right to submit evidence in the best way and in as proper a way as he can present it. It seems to me that the documents which have no bearing on the complaint after all, and you must understand that the two causes are separate. At this time it has no bearing in this case. It is a self-serving document, a list of names which are not identified in any manner, shape or form.

Trial Examiner Ringer: This may come in later. Of course, he has already testified that that is the list of the men that was read at this meeting. I don't suppose that

the weight of the evidence of that list would go beyond that. Those were the names called out. It may be connected up later. I assume it will. I think if not it will have very little weight.

272 Mr. Wachtel: I take it that the U. E. R. W. 720 has other members than the members belonging to the Electric Vacuum Cleaner Company, and the list of names read from, including fifteen factories in the city here have some shop membership. I don't know anything about the Local. How can that list of names be brought in without identifying who these people are?

Trial Examiner Ringer: That is something that will have to be brought in later.

Mr. Lodish: There will be payroll records that are being prepared. The same thing holds true of the other side of the table. They will have names that will be compared with the payroll. I think there was an objection made some time ago about people guessing how many people were present, and some testified six hundred, and they said how do you know, and they said here is a list of five or six hundred, and whether it will mean that they belong to the plant can be determined, later. Furthermore, this is sworn testimony, Mr. Examiner, and under oath he says that so many people said yes to a certain question.

Mr. Orgill: There may have been three or four people hollering at the same time.

Trial Examiner Ringer: Let me ask the witness several questions.

Examination by Trial Examiner Ringer

Q. (By Trial Examiner Ringer) Did you mark off
273 these names in any way as they were called?

A. Yes.

Q. On paper?

A. I did.

Q. How did you mark them?

A. I beileve they were then on yellow forms, yellow legal sheets at that time, and the names were called, that did not answer were crossed and then those that only answered this list was compiled.

Q. You mean that this list, Board's Exhibit No. 16 is not the list which was read off at that meeting?

A. These names?

Q. In other words, these various sheets which constitute Board's Exhibit No. 16 in their present form at least were not at this meeting?

A. Not in its physical form, no.

Q. In other words, the point is that the names which are now on these sheets marked Board's Exhibit No. 16 were the same names that were read off from some other sheets at that meeting?

A. That is correct.

Q. And were these names set out on Board's Exhibit No. 16 part of a larger list of names, sheets from which names were read at this meeting?

A. That is correct.

274 Q. Board's Exhibit No. 16 was then made up at a later date?

A. Yes, at a later date.

Q. What about the affidavits, Board's Exhibit No. 17?

A. That was made simultaneously with bringing in that list to my office.

Q. In other words, Board's Exhibit No. 17 was made up at a later date than the meeting date?

A. That is correct.

Mr. Lodish: I will qualify this.

Trial Examiner Ringer: All right.

Direct Examination (Continued)

Q. (By Mr. Lodish) Now, Board's Exhibits No. 16 and 17 were a result of something else that you gave to Mr. Koutnik?

A. Yes.

Q. Board's Exhibit No. 16 in addition to the names contains the addresses of the people?

A. That's right.

Mr. Lodish: Will you mark this as Board's Exhibit No. 18.

(Board's Exhibit No. 18 marked for identification.)

Q. (By Mr. Lodish) I now hand you Board's Exhibit No. 18 and ask you if you have ever seen that before?

A. Yes.

Q. Is that the original list that you testified about?

A. I had a similar copy, whether I had this list—no; I don't think is the list because these are not my figures.

275 Q. Do you know who handled that list?

A. No; I don't.

Q. Do you recognize the handwriting on that?

A. No; I don't.

Q. And this list you say you had was it the same type of paper?

A. That's right.

Q. And was there a double line of names?

A. That's correct.

Q. Where is your list, do you know?

A. I don't know. There were about five or six lists, and at a meeting I had one of them.

Q. Five or six of these lists?

A. That's right.

Q. Who had the five or six copies? You had one of them?

A. Mr. Young and Mr. Koutnik and Mr. Pascoe and probably somebody else.

Q. The list that you had, how did you mark it? Did you use letters or figures? What did you do?

A. No; we used a key system.

Q. Can you tell me what the key was?

A. Well, the key was this: We had a membership of five Locals, and when we called—we decided at the beginning of the meeting that each Local shall be designated by a number; for example, the Metal Polishers one, Ma-

276 chinists two, Molders three, Federal Union four, and there was another one five.

Q. Pattern Makers?

A. Pattern makers five. When the name was called, a certain member in the house, say machinist, it is the respective key number and by that way we knew what particular craft the name represented.

Q. So that if you called out the names of the polisher and he signified that he wanted to resign, you would put a one next to his name?

A. "Yes, one."

Q. Supposing you called out the name of a polisher and there was no answer, what did you do?

A. We left the name blank; took no action.

Mr. Lodish: Off the record.

(Discussion off the record.)

Mr. Lodish: We will withdraw this witness for the time being.

EDWARD KOUTNIK, being recalled, further testified as follows:

Direct Examination

Q. (By Mr. Lodish) I hand you what has been marked Board's Exhibit No. 18 and ask you if you have ever seen that before?

A. I did.

Q. Is that the list that you testified to that you used at the meeting of March of 26th?

277 A. It is.

Q. Now, that key up on the top; is that in your handwriting?

A. That is not in my handwriting.

Q. Do you know whose writing it is?

A. I don't know.

Q. Was it on there when it was handed to you?

A. It was on there, but I don't recollect who wrote it on there, but that's the key numbers we went by.

Q. That was given to you that way?

A. Given to me.

Q. In order that I may understand that method, the first name is William Bogucki. There was nothing marked at that name?

A. He didn't answer. He was not present.

Q. He was not present and he didn't answer?

A. He didn't answer.

Q. Do you happen to know him?

A. I don't think I know him. I think he is a polisher.

Q. The same is true of Joseph Bender, no mark?

A. I don't know him.

Q. You have a one next to John Pospieszynski; what is the significance of that?

A. The one next to his name, that was when he answered yes, and the one represents the craft that he was with.

Q. And that is the polishers?

278 A. That's polishers.

Q. Do you know him personally?

A. Who is that?

Q. John Pospieszynski?

A. I know pretty near all of the people in the factory by sight, but I don't know him by name.

Q. When these people come up, did you look around?

A. Yes; I looked to see when they answered who they are.

Q. They looked familiar?

A. They did. They looked as though they worked in the factory.

Q. There is one here, Eugene Fedor; that is a zero in front of it; what does that mean?

A. I guess I must have marked it from the start with a zero instead of leaving it out.

Q. I see.

A. Oh, no; I recollect that now. Them are people that had jobs somewhere else and I might have just marked them as zero as not being present or belonging to the C. I. O. when they went to a different shop. That was my own idea on that.

Q. That had nothing to do with the key of one to five?

A. No.

Q. Now, let me understand this. This list was given to you at the beginning of the meeting?

A. Yes.

279 A. I believe Sam Griff gave it to me or James Pascoe, one of the two.

Q. Who did the calling of the names?

A. I did the calling of the names.

Q. And you had this very same list in front of you?

A. Yes.

Q. You called out the names?

A. Yes, sir.

Q. And if there was no answer, you did nothing?

A. I did nothing.

Q. And when a man answered yes you put one down?

A. Put one down.

Q. And of your own volition you put zeros in certain cases; and what is the meaning of a thing like that? Name: John Medvesek, and you had a two in front of it and then you crossed your key out and put a line through that; anything significant in that?

A. I don't recollect that.

Q. You cannot explain that?

A. No; I cannot explain that as to what that line was put in there for.

Q. But it is written down in ink?

A. Yes; there were two names on the same list. He must have answered of his own volition.

Q. When you called him the second time he told
280 you, "You have already called me"?

A. Yes.

Q. And here is one typewritten name showing Negulli and it is crossed out and in pencil Negrelli?

A. That must have been a correction.

Q. Do you remember it specifically?

A. No; he probably made a complaint at the desk and it was changed.

Q. You don't happen to remember that?

A. No.

Mr. Lodish: I offer Board's Exhibit No. 18 as a part of my witness' testimony.

Mr. Spieth: I still object to that.

Mr. Orgill: I would like the opportunity of cross-examining before it is admitted.

Trial Examiner Ringer: I think you would be entitled to that.

Cross-examination

Q. (By Mr. Woodle) You say that this was handed to you by Mr. Griff; to the best of your recollection, do you know?

A. It was.

Q. Do you know when this list was given to you by Mr. Griff?

A. The night of the meeting.

Mr. Lodish: I object, Mr. Examiner. This testimony is by Mr. Griff or Mr. Pascoe.

281 Q. (By Mr. Woodle) I don't care which it is.

A. It was one of the two. I don't remember which one handed it to me.

Q. Are you sure it was on the night of this meeting? ~~Was the meeting at night, by the way; are you sure about~~ that?

A. I am pretty sure it was eight o'clock at night.

Q. And your recollection is that Mr. Pascoe or Mr. Griff handed you that paper and you don't know which it was?

A. I don't remember which it was. It was placed on the desk in front of me where I was standing, at the meeting.

Q. At the meeting. That is the first one that you saw at the meeting; you didn't see it before the meeting?

A. No; I didn't see it before the meeting.

Q. You don't remember a particular examination of this list before the meeting?

A. Well, there was a list of these names that was made up for application blanks and duplicates made off of that, that is typed out.

Q. The list of names are made out from what application blanks?

A. From all the application blanks that were signed by all the members of the C. I. O., and I believe they were made in the triple duplicate, if I am not mistaken.

Q. Do you want us to understand by that that this is the list that was made up from the application blanks of the C. I. O.?

282 A. I believe it was.

Q. You are not sure of that, though?

A. From the original list.

Q. Do you want us to understand that there are no names on here except those who had previously signed applications for membership in the C. I. O.?

A. That is the way I recollect it.

Q. In other words, every person whose name appears on this list, according to your statement, had previously signed an application for membership in the C. I. O.?

A. Yes, sir.

Q. And there are no other names on here?

A. Not that I know of.

Q. All the people who had signed their applications had their names on this list; is that it?

A. Yes.

Q. Do you know when those applications were signed, how long before this meeting?

A. I was not there when they were returned.

Q. How long before this meeting were these applications signed?

A. Well, the applications were signed I would say March 19th and the following week after that.

Q. During the week beginning?

A. Of the 22nd, they were coming into the office

283 regularly, and we were making out the copies from the applications.

Q. You don't state then that this is a list of all of the employees of the Electric Vacuum Cleaner Company?

A. No; because there was about a hundred and forty-nine applications stolen out of our office that we didn't check on our list.

Mr. Woodle: That is not responsive to our question.

Mr. Lodish: That is absolutely responsive to his question.

Q. (By Mr. Woodle) Of all of the employees of the Electric Vacuum Cleaner Company?

Trial Examiner Ringer: I overrule the objection. That seems responsive to me.

A. The C. I. O. members signed applications, that we

know. Not all the members of the Electric Vacuum Cleaner Company. A lot of them belonged to the A. F. of L.

Q. (By Mr. Woodle) You worked in one department in that company?

A. Well, I worked all over the factory.

Q. You worked all over the factory?

A. Certainly. I was sent all over, on the third floor, fourth floor, foundry, and all over. I was the inspector of punch presses and boring mills and hand screw machines.

Mr. Lodish: Are you through with the witness?

Mr. Woodle: Yes.

284 Mr. Lodish: I offer it now.

Trial Examiner Ringer: At this time I will reverse my ruling on Board's Exhibit 16 and sustain the objection to it. And admit Board's Exhibit No. 18.

Mr. Spieth: I have an objection to 18. I think that that is overruled.

Trial Examiner Ringer: That is overruled.

Mr. Spieth: My objection is overruled.

Trial Examiner Ringer: That objection is overruled.

Mr. Spieth: My objection, if I did not state it before, was that this list is not the best evidence. It is the list that they said was made up from application blanks of cards.

Trial Examiner Ringer: In my opinion, this is the best evidence we have of what names were called at that meeting, if my opinion be admissible, on that theory.

Mr. Spieth: There would be a further objection that Mr. Koutnik has been honest, and he said that he did not personally know these people; he had to take it as the names were called that they were the individuals named. He said the people looked like Electric Vacuum employees, but it was not possible for him to say and he has not attempted to say that he knew all of these names.

Trial Examiner Ringer: That would go to the weight of the evidence, rather than the competency.

Mr. Orgill: May I ask for what purpose it is offered?

285 Mr. Lodish: Yes, Mr. Examiner, there was an objection made by Mr. Wachtel that this was not a

part of the C case; although his objection was not well taken, it came close to the point, and I presume Mr. Orgill's objection is based on the same idea. The complaint alleges that the C. I. O. on March the 18th and the various dates thereafter represented a majority. There is, of course, an attempt made to prove that majority. This is the attempt. I am willing to concede that this attempt does not prove sufficiently so that the Board can certify that they have the majority. However, it is an attempt to prove that majority in the C case and, as such, whether it does or does not prove a majority in the C case it is evidence which will later by stipulation go into the R case as to the question of the problems of representation that arose and whether an election is justified. Now, it is for the purpose of proving the majority that it is instituted. It is there for that purpose, which I concede it probably does, then it is kept in for the purpose of showing a question regarding representation had arisen about that time with respect to the R case, which supplements the C case.

Trial Examiner Ringer: The ruling on which I admitted it was and is that it is some evidence as on the question of the majority. Objection to Exhibit No. 17 will be sustained.

Mr. Lodish: I request that Board's Exhibits 16
286 and 17 be put into the record as a proffer on my part over the objection.

Mr. Lodish: Mr. Griff was on the stand.

Trial Examiner Ringer: Do you wish to at this time stop or complete his testimony? I assume that we can finish tonight anyway. We are getting along pretty well and we will convene on Tuesday at a quarter to ten, rather than nine-thirty, if that is satisfactory to everybody. Nine forty-five Tuesday morning.

(Thereupon, at five o'clock p. m. an adjournment was had to Tuesday, June 15, 1937, at nine forty-five o'clock a. m.)

287 Room 2, New Court House,
Cleveland, Ohio,
Tuesday, June 15, 1937.

The above-entitled matter came on for hearing, pursuant to adjournment, at 10 o'clock a. m.
Before:

William P. Ringer, Trial Examiner.

APPEARANCES:

Harry L. Lodish, Regional Attorney, on behalf of the National Labor Relations Board.

L. C. Spieth and H. A. Spring, 1568 Union Trust Building, Cleveland, Ohio, on behalf of Electric Vacuum Cleaner Company, Inc.

Sam H. Griff, 610 Public Square Building, Cleveland, Ohio, on behalf of United Electrical & Radio Workers of America, Local 720.

Edwin F. Woodle and Bernard Wachtel, 318 Leader Building, Cleveland, Ohio, on behalf of A. F. of L. Affiliated Unions.

John H. Orgill, 1000 Guarantee Title Building, Cleveland, Ohio, on behalf of Cleveland Federation of Labor.

288 PROCEEDINGS

(The hearing was resumed at 10 o'clock a. m. pursuant to adjournment.)

Mr. Lodish: I believe Mr. Griff was on the stand and we had temporarily taken him off. We will put him back on.

(Mr. Griff takes the stand.)

Mr. Lodish: While Mr. Griff is taking the stand, we have a new appearance in this case on behalf of the United Electrical Workers.

Trial Examiner Ringer: Will you state your name,

please?

Mr. Carey: James B. Carey, General President, United Electrical Workers, 1133 Broadway, New York City.

Trial Examiner Ringer: Are you an attorney, Mr. Carey?

Mr. Carey: Not a member of the Bar; no, sir.

Trial Examiner Ringer: You are not appearing as counsel?

Mr. Carey: As representative.

Trial Examiner Ringer: As representative but not as legal counsel.

Mr. Carey: As representative.

Trial Examiner Ringer: That is satisfactory to the Regional Attorney; is it?

Mr. Lodish: Yes. Mr. Carey has a right, of course, to appear as representative and take part in the proceedings in the case.

289 Trial Examiner Ringer: I suggest that the usual procedure be gone through with. For the benefit of any who are in the room for the first time, we smoke in the recesses here and not during the regular proceedings. You may proceed now.

Mr. Lodish: (Addressing the Reporter) Do you happen to have the last question and answer?

The Reporter: No; I do not.

(Discussion off record.)

SAM H. GRIFF, the witness on the stand at the time of recess, resumed the stand and testified further as follows:

Direct Examination (Continued)

Q. (By Mr. Lodish) Did you hear Mr. Koutnik's testimony with regard to what transpired at the meeting of March 26th?

A. Yes, I did.

Q. Was his testimony substantially correct? Was it a correct exposition of what happened at that meeting?

A. That is correct.

Q. Did you examine Board's Exhibit No. 18, which was introduced as part of Mr. Koutnik's testimony, showing a list of names and certain checks and numbers from one to five opposite various names?

A. Yes.

Q. And did you have a similar copy?

A. Yes.

Q. And how many copies of that list were in existence at one time?

290 A. Either four or five.

Q. Now, after this procedure which you and Mr. Koutnik described occurred on March 26th, what was the purpose within your knowledge with regard to that list? Now, this is beginning March 26th.

A. A new list was compiled setting forth the addresses alongside of names of those people that were present at the meeting and said they desired to resign from their then affiliated Locals.

Q. And is that list the list which you handed me, which is known as Board's Exhibit No. 16, and which was refused admission into this proceeding?

A. That is correct.

Q. Who made that list, if you know?

A. My best knowledge is Lowrence, Howard Lowrence.

Q. You didn't see him make that list?

A. No.

Q. Who gave you the list?

A. Howard Lowrence of Ed Koutnik; I don't recall right now.

Q. When was that—how long after the meeting of March 26th?

A. Either the following day or the following morning. The following day, Saturday, or Monday.

Q. March 26th was a Friday?

A. That is right.

291 Q. Now, when this list was given to you, how many copies of that list were there—the one with names and addresses similar to Board's Exhibit No. 16?

A. I don't recall, although they were separated by the respective key numbers. That is, the machinists were

compiled separate, the federal locals separate, and the polishers separate and so on.

Q. That shows on the document itself; doesn't it?

A. I believe it does.

Q. That is a page or two of polishers and a page or two of something else?

A. That is correct.

Q. And you don't know how many copies of that were made?

A. No; I just received the original.

Q. The original.

A. Yes.

Q. And that was typewritten?

A. That is right.

Q. What did you do thereafter with that list?

A. Had an affidavit prepared with that list ready to forward them to the respective Locals.

Q. That affidavit is what is known as Board's Exhibit No. 17, which was refused admission in this proceeding and proffered by me as a part of our case?

A. Yes.

292 Q. Now, you testified before that you had seen a certain newspaper item which influenced your conduct in this respect. Have you made an effort to get that newspaper item?

A. Yes, I did; just about ten minutes ago.

Q. What did you do?

A. The Plain Dealer told me they are all out of press copies of that addition.

Q. What date is that?

A. April 4th, I believe. First Sunday of April.

Q. Were you at the Plain Dealer office this morning?

A. Yes, I was.

Q. And they told you that they had no more copies?

A. That is right.

Q. Will you, Mr. Griff, the first chance you get, go to the Public Library and see if you can find a Sunday paper of April 4th, and if you find that item copy it verbatim?

A. I will.

Mr. Lodish: And, of course, respective counsel have

the privilege of also looking at that to see that will conform exactly, because apparently an original or a duplicate is not available.

Trial Examiner Ringer: Do you have a copy of it now?

Mr. Lodish: I don't know what it is.

Q. (By Mr. Lodish) Now, did you make any effort
293 to communicate with anybody representing the Electric Vacuum Cleaner Company at about that time?

A. Mr. Spieth.

Q. Mr. L. C. Spieth, who is counsel for the company?

A. Well, I knew the firm name.

Q. What is the firm name?

A. Spieth, Springer, Cannon, and somebody else I believe.

Q. Now, what effort did you make in that regard, Mr. Griff, and what date?

A. March 26th I believe, the same day of the meeting. I called Mr. Spieth at his office the latter part of the afternoon and spoke to him.

Q. Let me interrupt you for just one moment. Why did you call Mr. Spieth—for what information?

Mr. Orgill: We object to that, if the Court please.

Trial Examiner Ringer: Overruled.

Mr. Orgill: Why a man does a thing is certainly not competent evidence. How can we determine what causes his motor centers to move. It is so remote, so distant.

Trial Examiner Ringer: Overruled. Answer the question: Why did you call him?

A. I knew that he was the counsel for the Electric Vacuum Cleaner Company. I knew he was—well, he was the only one I could think of to contact for the Electric Vacuum Cleaner Company.

294 Mr. Orgill: I ask that the answer be stricken out.

Trial Examiner Ringer: Overruled.

Q. (By Mr. Lodish) That is, in your opinion, Mr. Spieth represented the Electric Vacuum Cleaner Company, and that is why you called him?

A. Yes.

Mr. Orgill: I ask that that be stricken.

Trial Examiner Ringer: Overruled.

Q. (By Mr. Lodish) Proceed. I interrupted you.

A. After this meeting I desired to be of some assistance and see that the plant was opened. I knew that there had been some attempt to open it, and that is why I called Mr. Spieth. Somebody answered and told me it was Mr. Spieth. I told him who I represented and told him I believed I could be of some service in effectuating some peace at the plant. He told me at that time—he was in conference with the company and somebody else I don't recall right now—that he didn't know what I had to offer, but if he thought I could be of some service, he would get in touch with me. That was the only conversation I had with Mr. Spieth.

Q. That was March 26th?

A. Yes, sir.

Q. Now, did you have occasion thereafter to talk with either Mr. Spieth or any other person whom you believed represented the company?

295 A. No.

Q. Did you have occasion to talk to Mr. Spieth again on the telephone at any other time?

A. No; I didn't.

Mr. Lodish: I would like to interrupt for a moment, Mr. Examiner, to state that there has been a request at the table to have people advised of the segregation of witnesses. There are some strangers present. We don't know who they are.

Trial Examiner Ringer: I indicated last week that I would like counsel to watch that. Are there any persons here who understand themselves to be witnesses who have not been given particular permission to remain in the room?

(An unidentified lady in the rear of the room rises.)

Trial Examiner Ringer: Are you a witness?

Unidentified Lady: I have nothing to do with this affair.

Trial Examiner Ringer: That is all right. You have a perfect right to stay then. It is only persons who will be witnesses in this case, and if there are any such here, they will be required to remain in the hall until called.

Q. (By Mr. Lodish) Now, Mr. Griff, as counsel for the

C. I. O. Union in this case, I presume that you had perhaps many meetings with your clients. I am not interested in a description of those. Will you tell us when your next contact occurred between yourselves and
296 anybody representing the company or any experiences you had at the plant itself?

Mr. Orgill: I object, if the Court please. The witness has already said that he had no other contacts.

Trial Examiner Ringer: Read the question now.

(Last question read by Reporter.)

Trial Examiner Ringer: Overruled.

A. I was at the plant on the morning of April 5th when it opened.

Q. (By Mr. Lodish) And tell us what happened on that day, of your own knowledge and of your own experience?

A. I arrived at the plant property about seven-ten a. m., April 5th, observed some three hundred individuals wearing a white button, indicating their A. F. of L. affiliation, noticed them mostly on the side of the plant which is in East Cleveland. Across the street were great numbers of people, and I observed at the gate there was a number of these people with these buttons, which was necessary to pass through or by, to get into the plant, I observed these individuals with these buttons lingering among the crowd across the street, and asking them to go in to work. In fact, I was asked to go into work also.

(Discussion off record.)

A. I noticed that these individuals with these white button indications were hostile, and a number of people who refused to go were pushed around, slugged, and
297 about eight-thirty these individuals with these buttons started to drive these people who refused to go into the plant away from the plant, and there were numerous skirmishes in and about the plant property.

Q. How long were you there that morning, Mr. Griff?

A. Approximately two hours.

Q. I believe you were struck with something?

A. Yes, I was. I was given the "bum's rush."

Mr. Lodish: That is all.

Trial Examiner Ringer: All right. Next, the repre-

sentatives of the company union. Any questions?

Mr. Carey: No questions.

Trial Examiner Ringer: Respondent?

Mr. Spieth: No questions.

Trial Examiner Ringer: Counsel for the A. F. of L. Union?

Mr. Woodle: No questions.

Trial Examiner Ringer: That will be all then, Mr. Griff.

Mr. Lodish: Subject, of course, to his return with that newspaper item or a copy of it. Mr. Examiner, we have subpoenaed three people to appear this morning at ten o'clock. I would like to call one of those three. Walter Scott.

(Walter Scott takes the stand.)

Trial Examiner Ringer: Have you been sworn, Mr. Scott?

Mr. Scott: No; I haven't.

298 (Mr. Scott sworn by Trial Examiner Ringer.)

WALTER E. SCOTT, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Lodish) Will you state your full name and address, please?

A. Walter E. Scott, 1002 East 149th Street.

Q. And your present union affiliations, if any? That is, in an official capacity? Are you a union official?

A. I am a national organizer.

Mr. Spieth: I can't hear you, Mr. Scott.

The Witness: I am a national organizer.

Q. (By Mr. Lodish) National organizer of what union?

A. United Electrical and Radio Workers of America.

Q. As a preliminary question, I don't believe that you and I have ever met?

A. That is correct.

Q. And you have come here in response to a subpoena?

A. I have, yes.

Q. Now, had you originally, or at some time previous, been an official of any other union?

A. Yes.

Q. What was the first union that you were an official of?

A. The Mechanics Educational Society of America.

299 Q. Which is commonly known as the MESA?

A. Correct.

Q. What official were you and when?

A. I held the office of Secretary, Financial Secretary, when they first started in Cleveland under Local No. 5, and when it was transferred, we broke up into different Locals. I was transferred into Local 20, and I held that position until they transferred the Local over.

Q. That is, you were Financial Secretary?

A. Yes.

Q. Of Local No. 20?

A. Yes.

Q. What year was that?

A. I can't tell you just the exact date when we started, but I was in that capacity until we transferred over last November into the United Electrical and Radio Workers of America.

Q. November, 1936?

A. Yes.

Q. Did you ever work at the Electric Vacuum Cleaner Company?

A. No, sir.

Q. Your sole connection with the Electric Vacuum Cleaner Company then was as a union organizer or official?

A. Yes, sir.

300 Q. Now, when was your first contact with the Electric Vacuum Cleaner Company?

A. Well, the first contact I had with them was when we organized them into Local No. 20 of the MESA.

Q. Can you remember the approximate date?

A. No; I couldn't.

Q. Do you remember the strike in 1935?

A. Yes.

Q. How long before that strike did you organize there?

A. I would roughly say about seven or eight months.

Q. So if the strike was in June or July of 1935, you organized in the fall of 1934?

A. I imagine it would be about that.

Q. Now, were you active in the organization at the plant?

A. Very much so.

Q. Did that organization subsequently result in a strike?

A. It did.

Q. In 1935?

A. Yes.

Q. What was the purpose of that strike—just very briefly, in a word or two?

A. Asking for more money.

Q. It was a strike for wages?

A. Wages, yes.

Q. Did you purport to represent a majority of the
301 employees, or didn't you know?

A. We had the majority.

Q. Were you active as an official during the time of the strike?

A. I was, yes.

Q. Do you remember when the strike terminated?

A. I do.

Q. Can you tell us from your own information just how that strike terminated?

A. How the strike ended, in other words, you mean?

Q. Yes.

A. By the A. F. of L. stepping in there and forcing a contract to go back to work with the understanding that there was to be no more strikes in the shop. It was a freeze-out for our people.

Q. Do you happen to know whether the A. F. of L. had laborers in the plant before 1935?

A. The only knowledge I had of that was, I think, they had a strong Polishers Union in there.

Q. So to your knowledge, then, the American Federa-

tion of Labor had a Polishers' Union in the plant; then the MESA organized, started a strike, and at least at the termination of the strike there resulted a contract with the A. F. of L. for the entire plant?

A. Yes.

302 Q. That contract, Mr. Scott, is in evidence. You don't know about that?

A. No.

Q. You weren't here?

A. No.

Q. Were you consulted in the end of the strike—did you have anything to do with ending the strike?

A. I was there when the vote was taken to go back to work or continue on the strike.

Q. Where was this?

A. Here in the hall at 1625 St. Clair Avenue.

Q. What was this—a meeting of some kind?

A. A general meeting, the Electric Vacuum Cleaner Company division.

Q. Of the MESA?

A. Yes, of the MESA.

Q. And about how long before the strike ended was that vote taken?

A. I think the strike ended about two days after the vote was taken.

Q. What was the result of that vote?

A. The vote was taken with the understanding that there would be no list taken as to how many voted. There would be no count exposed as to what the count was, and the count showed to go back to work.

303 Q. They voted to go back to work?

A. Yes. Of course, I knew the count but I never exposed it.

Q. When they went back to work it was under a contract?

A. There was no contract.

Q. But you do know there was an A. F. of L. contract?

A. Not to my knowledge, no.

Q. When did you first know about an A. F. of L. contract?

A. The only information we had on that contract, was that the A. F. of L. had agreed with the company that they would replace all these men back to work, or some effect of that kind. I never paid much attention to what that was. After the boys voted to go back, we dropped it.

Q. What happened to that Local No. 20 of the MESA, when work was resumed after the strike?

A. We continued as Local No. 20.

Q. You what?

A. We continued on with the Local. We had other shops in it.

Q. You say you had other shops in it?

A. Oh, yes, that was not a Local of its own.

Q. What happened to the Electric Vacuum Cleaner Company branch of Local No. 20?

A. We carried the boys right along with us. There was a lot of them that stayed right along with us, that paid dues right along.

304 Q. How long did they continue paying dues, do you remember?

A. Some of the boys paid dues when we transferred to the C. I. O., they were still paying dues.

Q. So that you remained active as a MESA group but, I presume, without any negotiations with the management?

A. Yes.

Q. And did your contact with the Electric Vacuum Cleaner Company then cease for a while or did you have further contacts in 1935?

A. I had no contact with them after that at all.

Q. Did you have any that you can remember in 1936?

A. No.

Q. When do you again come into the picture with regard to contacts with the Electric Vacuum Cleaner Company?

A. Not until we put the drive on to organize the shops again under the C. I. O.

Q. And that was when?

A. When the strike was on. The exact date I can't give it to you. I believe it was the first part of March.

Q. To refresh your recollection, the plant closed Friday, March 19th, and was closed until Monday, April 5th. Now, how long before March 19th, before the day the plant closed, did you start organizing?

A. About three days.

Q. In other words, about March 16th?

305 A. Yes.

Q. Do you happen to know how the C. I. O.—I will withdraw that. Do you know the circumstances under which the C. I. O. began to organize that plant?

A. I do.

Q. What were those circumstances?

A. A group come to me and asked for a meeting.

Q. A group of whom?

A. Of employees of the Electric Vacuum Cleaner Company.

Q. About how many?

A. About five or six the first time, and after that we had a meeting arranged.

Q. They knew you, did they, as an organizer for the C. I. O.?

A. Correct.

Q. And did they know you as a former organizer for the MESA?

A. Yes, they did.

Q. You made no effort to organize the plant before that?

A. No.

Q. Did any of your C. I. O. officials make an effort to organize the plant before that, to your knowledge?

A. Not to my knowledge.

Q. So, as far as you know, the first advent of the C. I. O. in the Electric Vacuum Cleaner Company was the invitation by certain men who worked in the plant?

306 A. Yes.

Q. All right now, what did you do in response to that request?

A. I arranged for a meeting at once for them.

Q. That same day?

A. I did.

Q. And you think that was about—

A. The meeting was held the next night after the arrangements were made.

Q. On Tuesday or Wednesday?

A. On Wednesday night.

Q. That would be March 17th?

A. Yes.

Q. And were you present at that meeting?

A. I was.

Q. Can you estimate just the approximate number of people at that meeting?

A. At that meeting I would estimate that about sixty were there at that meeting.

Q. About sixty?

A. Yes.

Q. And briefly you went through the formalities of starting an organization?

A. Yes.

Q. Did you give people application cards?

307 A. When I got there. I was a little late getting there and there was another organizer took care of that until I got there. When I got there I furnished him with the cards to go there with—and when I got there they were practically all signed up in there.

Q. Did individuals get cards to hand out to other people?

A. They did.

Q. What was your next contact with the company?

A. With the company or with the boys?

Q. Well, did you have many meetings with the boys?

A. I had no more meetings with them until Friday afternoon.

Q. Of the day the plant closed, March 19th?

A. The day they sat down in there.

Q. Now, between March 16th and March 19th, did you have any contacts with the management?

A. No, sir.

Q. Or anybody representing them?

A. No, sir.

Q. What happened March 19th?

A. I got a call about four o'clock in the afternoon that there was a sit-down strike in progress at the plant.

Q. Do you know who called you?

A. No; I don't. I was called on the telephone, and I don't know who rung me.

Q. What did you do then?

308 A. I got over these as soon as I could to see what the trouble was, and they told me, so I immediately made arrangements with the boys to stay in there until we got it straightened out.

Q. And what time did you get down to the plant?

A. I think it was around six o'clock.

Q. Friday evening?

A. Yes.

Q. All right. Proceed.

A. Well, I went to the window. I didn't go in the plant. I went to the window and asked them what the trouble was, and they told me, and I told them to sit tight until we could get it straightened out Friday morning.

Q. Until you could get it straightened out Friday morning?

A. Friday morning; this was Thursday night.

Q. I misunderstood you then. You got the call Thursday at four o'clock.

A. Yes.

Q. And you went to the plant about five o'clock Thursday?

A. Yes.

Q. And in some way indicated to the men that you would try and straighten the thing out?

A. Yes.

Q. What did you do then, Thursday evening, if anything?

A. We arranged to get some eats in to the boys.

309 Q. Some what?

A. Eats.

Q. Oh, food?

A. Yes, food. They hadn't had their supper and we arranged to get food in to them. That was about all that was done Thursday night.

Q. What did you do Friday morning?

A. Friday morning I went over there about seven o'clock and was chased out of there with clubs and stuff, was chased out of the neighborhood. They would not let me get near the plant in any way, shape or form. So I immediately went to the East Cleveland Police Station.

Q. Who did you see at the East Cleveland Police Station, and what did you do there?

A. I immediately saw Chief of Police Corlett and stated the case to him, and the Chief of Police Corlett immediately made some kind of arrangement to get these men back to work that were discharged, and a peaceful settlement. That is all we were asking for at the time.

Q. When you were in the presence of Chief of Police Corlett, did you see him talk to anybody or hear him call anybody?

A. I heard him call at the Electric Vacuum Cleaner Company's office. I think he talked with Mr. Wilson, but I couldn't verify who he talked to there.

310 Q. Were you standing near him?

A. No.

Q. How do you know he called the Electric Vacuum Cleaner Company?

A. He said he would call them.

Q. Where did that conversation—withdraw that. You stated that case to him?

A. Yes.

Q. His response was what?

A. He said he would call the Electric Vacuum Cleaner Company and said if he could make arrangements with them—

Q. Did you see him make a phone call then?

A. Yes.

Q. You were in the same room?

A. Yes.

Q. Did you hear what he said?

A. No; I didn't.

Q. But you saw him call?

A. Yes.

Q. Then he was on the phone for approximately how

long?

A. Probably ten minutes. It was not any more than that.

Q. Then when he hung up, did he turn to you and converse with you again?

A. He told me he would let me know what he could do, and at that time him and some other policeman—I
311 don't know who it was—went to the plant. I left the police station and went over to the Auto Workers headquarters and told him where he could find me.

Q. Then, as far as your knowledge is concerned, Chief of Police Corlett left, ostensibly for the plant, and you went to your headquarters?

A. Yes.

Q. This was about what time Friday?

A. This was around probably nine o'clock.

Mr. Lodish: Will you mark this Board's Exhibit No. 19 for identification?

(Board's Exhibit No. 19 was so marked for identification.)

Q. (By Mr. Lodish) Mr. Scott, I now hand you what has been marked for identification Board's Exhibit No. 19 and ask you if you have ever seen that before?

A. Yes, sir; I have.

Q. Is that your signature?

A. That is.

Q. Did you type that—who typed that, do you know?

A. The stenographer at the East Cleveland City Hall.

Q. East Cleveland City Hall?

A. Yes.

Q. And is that the office of the Chief of Police?

A. It is.

Q. Now, this apparently—I withdraw that. Can
312 you tell me who put the pencil writing on under the district organizer's signature?

A. I cannot.

Q. You don't know that?

A. No.

Q. That was not on originally?

A. No.

Q. So whoever has had custody of this just put that on?

A. Must have.

Q. Is it true that you are district organizer of U. E. and R. W. of A.?

A. I was district organizer at that time that was drawn up. Since that time I am the national organizer.

Q. But on August 19th you were district organizer of the U. E. and R. W. of A.?

A. Yes.

Q. So whoever wrote that was merely correctly describing your position?

A. Yes.

Q. So after this was typed and signed, what did you do with it?

A. The Chief of Police took that to the Electric Vacuum Cleaner Company's office, and he told me that he had a conference with Mr. Lenahan & Mr. Wilson, and they had agreed upon that.

313 Mr. Orgill: We object to hearsay conversation.

Trial Examiner Ringer: Overruled.

Mr. Orgill: It is all hearsay. One person told somebody else about something.

Trial Examiner Ringer: Overruled.

Q. (By Mr. Lodish) That is, Chief of Police Corlett later reported back to you?

A. Yes, sir.

Q. In your capacity as officer of the union?

A. Yes.

Q. And advised you that your agreement to go back to work with the reinstating of two men had been accepted?

A. He did.

Q. He was the intermediary between you and the company?

A. Yes.

Mr. Orgill: I now ask that that all be stricken out.

Trial Examiner Ringer: Overruled.

Mr. Lodish: I now offer in evidence Board's Exhibit No. 19.

Mr. Orgill: To which I object. I can't see for an instant what good it would be. I can't see how that could have any bearing on the union rights or property rights or anything involved.

Trial Examiner Ringer: It will be connected, will it not?

314 Mr. Lodish: This man testified that he could not get near the plant. He is an official of the Union and as such was desirous of negotiating or otherwise settling this controversy. He couldn't get near the plant, so he logically and naturally went to see the City official. This plant is located in East Cleveland. He suggested to the City official that the City official be his representative in this matter. This City official later reported back to him and stated that he had conferred with Lanahan of the A. F. of L. and Wilson of the Electric Vacuum Cleaner Company, and, as his representative, and perhaps as a dual representative of all sides, had reached an agreement. I think without any further connecting up, subject, of course, to rebuttal or any answer they have as to this man's veracity as to the conversation, I think it is perfectly admissible in this case or any other case.

Mr. Orgill: It is apparent upon its face that it is not. And the argument only makes it more so. It simply exemplifies the fact that it is hearsay upon hearsay. The Chief of Police is available; if he had conversation, why doesn't he come and testify to it? Why do we have to be regaled with hearsay upon hearsay, surmise upon surmise, and opinion upon opinion?

Trial Examiner Ringer: You think that the facts are not as this would indicate?

315 Mr. Orgill: I don't know. I know this from human experience—and I have had quite a bit of it—when I relate conversation that I had with you and you begin to relate conversation that you had with me, and John Paul Jones relates conversation that he had with you or me, you have to get very far from the truth.

Trial Examiner Ringer: Of course, this will all be cross-examined upon. I will overrule the objection.

Q. (By Mr. Lodish) Now, Mr. Scott, did you see Chief

of Police Corlett again in connection with this purported agreement?

A. Yes.

Q. Where was this?

A. In the plant at the Electric Vacuum Cleaner Company.

Q. You were with Chief of Police Corlett in the plant?

A. In the plant.

Q. And what day was that?

A. On the same day.

Q. On the 19th?

A. On Friday the 19th, yes.

Q. At about what time?

A. At about two o'clock.

Q. And who else was there with you two?

A. There was nobody there from the Union with me. He called me at the Police Station and asked me to
316 come out to the plant, and they took me out there in the car, took me into plant, and the Chief told me that the boys had refused to accept that signature unless I would get up in front of them and tell them that it was my signature and it was all right.

Q. And by your signature he was referring to this paper?

A. Yes; that paper.

Q. Board's Exhibit No. 19?

A. Yes.

Q. And he said they wouldn't accept his statement and they wanted you there personally?

A. Yes.

Mr. Orgill: May we have it understood that my objection goes for all this hearsay stuff.

Trial Examiner Ringer: Of course, that is a very broad statement. You are referring to conversation between him and Chief of Police Corlett at the present time?

Mr. Orgill: Yes.

Trial Examiner Ringer: All right.

Mr. Orgill: And all of like ilk.

Trial Examiner Ringer: What?

Mr. Orgill: I said all testimony of like kind. It is

all hearsay.

Trial Examiner Ringer: Of course, you can always raise that when the matter comes up, on exception, if you should desire and there should be any need for it.

317 Mr. Orgill: Without objections?

Trial Examiner Ringer: Yes.

Mr. Orgill: I am not so sure of that.

Trial Examiner Ringer: On any vitally important ones I would make a specific objection.

Mr. Orgill: I think all this hearsay stuff is objectionable.

Trial Examiner Ringer: I haven't ruled on that I don't think specifically, and it will be admitted, Board's Exhibit No. 19.

(The paper referred to was received in evidence and marked "Board's Exhibit No. 19, Witness Scott.")

Q. (By Mr. Lodish) Now, when Chief of Police Corlett told you in the plant that you were wanted personally, who else was there when he told you that?

A. I don't recall. I never seen Lenahan to know him, or Mr. Wilson. I wouldn't know them if I had seen them in the plant.

Q. Mr. Wilson is sitting in back of Mr. Spieth. Had you ever seen him before?

A. Not to my knowledge, no.

Q. What did you do then in response to Chief of Police Corlett's request?

A. After I got in the plant, I got up on the table. They assembled all the men that were in the plant into the

318 cafeteria and I got up on the table and I read that letter off to them. I told them I had no power to make the decision then, that was the only proposal I had. They could accept it or reject it to suit themselves. They accepted that proposal. I told them, "If you will accept that, we will all go home," and they accepted that proposal.

Q. Did everybody then leave?

A. Everybody left the plant, yes.

Q. This was about what time?

A. About two o'clock I think it was.

Q. Anything said by you or by anybody else in the plant then about when work would resume?

A. It was the understanding when we left there that they would all go to work Monday morning.

Q. How did you get that understanding?

A. That was the understanding of Chief of Police Corlett. I think it states in there that we were to go to work Monday Morning.

(Mr. Lodish hands Board's Exhibit No. 19 to Witness, who examines the said exhibit.)

A. Well, that was the understanding, that we was to go back to work Monday morning peaceful. That was the understanding we had.

Q. Did you then leave the plant with everybody else?

A. Yes.

319 Q. What was the next thing you did in connection with this matter, if you recall?

A. We called a meeting at four o'clock in the afternoon, that same afternoon.

Q. What time was it when you left the plant Friday about?

A. Well, it was not later than two-thirty.

Q. I see. And then you had a meeting at about four o'clock?

A. Yes.

Q. A meeting of what?

A. All of the members we had in the plant at that time.

Q. Where was this meeting?

A. Held at the Old Postoffice Building at 14060 I think the number is, St. Clair Avenue.

Q. About how many people attended that meeting?

A. I judge around five hundred and fifty there.

Q. Were you there?

A. I was, yes.

Q. Were officers selected at that meeting?

A. There was, yes.

Q. It is in evidence that Mr. Koutnik was elected Chairman?

A. He was, yes.

Q. And Mr. Lowrence, Secretary?

A. Correct.

Q. And who else, if you remember—what other officers?

A. I think a man by the name of Young was Vice-President.

320 Q. Louis Young?

A. Louis Young and—

Q. Well, that is all right, if you can't remember. Now, was anything said at that meeting about going back to work?

A. Everybody understood they were to go back to work Monday morning.

Q. Did you say anything about that?

A. I did.

Q. What did you say?

A. I told them everything was settled peaceful and everybody would go back to work Monday morning without any trouble.

Q. Did you make a speech to that effect?

A. I did, yes.

Q. How long did that meeting last?

A. Approximately an hour and a half.

Q. From about four to five-thirty?

A. Yes.

Q. What was the next thing you did with reference to this matter?

A. I turned the case over to Brother Pascoe, a national organizer.

Q. And you stepped out of it?

A. I stepped out of it.

Q. That is all you had to do with it?

A. Yes.

321 Q. Are you working now, Mr. Scott?

A. Yes, I am.

Mr. Lodish: That is all.

Trial Examiner Ringer: Any questions by the C. I. O. Union?

Testimony of Walter E. Scott

Direct Examination

Q. (By Mr. Carey) As the District Organizer, you are aware of the program of organization of the Electric Vacuum Cleaner Company?

A. I didn't get the question.

Q. As a District Organizer, you were aware of the educational program of organization of the Electric Vacuum Cleaner Company?

A. I was.

Q. Was it intended by the organization, or part of its program, to have a strike that took place in March, 1937?

Mr. Orgill: I object.

Trial Examiner Ringer: Sustained.

Q. (By Mr. Carey) Previous to the time the strike took place, had there any strike vote been taken by the Local?

A. No.

Q. It was not intended that a strike vote would be taken by the organization, to your knowledge?

A. No.

Mr. Orgill: I object.

322 Trial Examiner Ringer: Overruled.

Q. (By Mr. Carey) When you were called the day the strike took place, what were you advised was the cause of the situation that existed?

Mr. Spieth: I object. He has already testified to that.

Trial Examiner Ringer: I believe that has been covered.

Mr. Carey: I don't remember.

Mr. Orgill: Yes, it has.

Trial Examiner Ringer: It will save time to let him answer.

The Witness: Repeat your question.

Q. (By Mr. Carey) You were called on the telephone, you testified. What did they state caused the dispute?

A. The discharging of two men?

Q. The discharging of two men?

A. Yes.

Mr. Carey: No further questions.

Mr. Ralph Gordon: May I ask a question?

Trial Examiner Ringer: Yes.

Mr. Ralph Gordon: I understand the gentleman (referring to Mr. Carey) is an officer of the C. I. O.; now is that correct?

Trial Examiner Ringer: Yes.

Mr. Gordon: Do you mean to tell me that any officer of the organization can come in here and cross-ex-
323 amine the witness? And you call this is a trial?

Trial Examiner Ringer: This is not cross-examination. This is just asking additional questions.

Mr. Lodish: The rules and regulations, as you, of course, know, provide that a person can be represented either in person, by representative, or by counsel. Of course, if Mr. Carey asks questions of a witness, that prevents anybody else from asking. Mr. Griff will not be allowed to question that witness, neither will Mr. Pascoe. In other words, it is the same situation as Mr. Woodle and Wachtel and Orgill, perhaps, choosing which one is to examine the witness.

Trial Examiner Ringer: Of course, that is the normal procedure in court matters. Let us take five-minutes recess at this time.

(Recess.)

Trial Examiner Ringer: There were no questions by Respondent?

Mr. Spieth: I haven't any now.

(Discussion off record.)

Trial Examiner Ringer: Proceed then, Mr. Woodle.

Cross-examination

Q. (By Mr. Woodle) You testified, Mr. Scott, that your first connection with the Electric Vacuum Cleaner Company was in 1934 approximately?

A. Yes.

324 Q. At that time you were elected a member of the MESA were you?

A. I was, yes.

Q. Although you were not a member or employee of the Electric Vacuum Cleaner Company, you were a mem-

ber of that Local?

A. That Local, yes.

Q. Were you then an employee of any company with which that Local had organization?

A. Yes, I was.

Q. What company?

A. General Electric.

Q. Did you know at that time a man by the name of Demore—D-e-m-o-r-e?

A. Certainly, yes.

Q. And a man by the name of Merle Parks; was that his name?

A. Yes.

Q. Were they also members of that organization at that time?

A. They were, yes.

Q. And continued as members of that organization until how long?

A. Until after that first strike was settled.

Q. In 1935?

325 A. Yes.

Q. You then testify that you had no further connection with the Electric Vacuum Cleaner Company until March of 1937; is that right?

A. Right.

Q. And at that time you said four or five men came to you and asked you to address a meeting?

A. Correct.

Q. Who were those men?

Mr. Lodish: What is your question?

Mr. Woodle: Who were those men?

Mr. Lodish: Mr. Examiner—

Mr. Carey: I object to the question.

Mr. Lodish: I don't know who those men are, and the Board very often makes it a practice in cases where there is no attempt to prove outright by name and address a majority, to perhaps keep some names of these men confidential because of an interunion dispute, or without interunion dispute, where there is a case of Union versus Respondent. The reasons, of course, are obvious. These five

or six men, or several of them, may be working there. They may have gone through a certain mental period and changed their minds and perhaps would rather not be involved in the case any more. It is not quite fair to introduce names. I would have no objection to his naming the five or six or any of those five or six who are
326 present and who are no longer working there. Maybe all five of them are no longer working there. There are twenty-six that aren't. But subject to that, I think perhaps it is not quite fair.

Trial Examiner Ringer: I don't see any need for that question being answered. I will sustain the objection.

Mr. Woodle: It was not asked, I am sure, for the purpose of any ill will on the part of the company, but I did want to know who the organizers or supposed organizers, if there were any such, of this Local were.

Trial Examiner Ringer: The important thing on this, as I see it, is the fact that some man came and asked them to call a meeting, and that was done. Now, unless you are claiming that did not occur, I don't see any reason for going into that.

Mr. Lodish: May I suggest this: That this man whisper to Mr. Pascoe the names of those he remembers and that if any of those are not working, that they be spoken for the record. I have no desire to hide anything.

Trial Examiner Ringer: That is perfectly satisfactory. Mr. Pascoe, will you come up and speak to him?

(Discussion off record.)

Mr. Lodish: Mr. Examiner, I am advised that two of the men named are not working there and I, of course, have no objection whatsoever to their names being men-
327 tioned, and, if the Trial Examiner insists or thinks it . . is material, I have no objection to any of the names being mentioned. I am merely stating a matter of policy.

Mr. Woodle: I won't insist.

Q. (By Mr. Woodle) Name two of them?

Trial Examiner Ringer: All right. There is no difficulty then actually. That last question—read it, Mr. Reporter.

(Following question read by Reporter: Name two of

them.)

A. One of them was Howard Lowrence and the other Ed Koutnik.

Q. (By Mr. Woodle) And you say, with those, there were three other persons?

A. Three others, yes.

Q. And as a result of the request of these men, you addressed a meeting on the night of March 17th?

A. Yes.

Q. That was a Wednesday night?

A. Wednesday night, evening.

Q. And at which about sixty people were present?

A. About sixty people in that meeting, yes.

Q. And I believe you testified that all of the people present at that meeting became members of the U. E. and R. W.?

A. They did, yes.

Q. Is that right?

328 A. Correct.

Q. How did they become members of that organization?

A. By putting in their applications.

Q. Is that all that is necessary to become members of your Union—to sign an application card? Everybody that signs an application card becomes a member; is that what you mean?

A. Certainly.

Q. And it is not necessary for the organization to do anything or to act on the application of the proposed members? Merely to have somebody sign a card and that, ipso facto, makes them a member?

A. We initiated them in a body; we act in a body. We don't initiate men individually. We initiate them in a group.

Q. What do you mean by initiating them in a body?

A. We give them the obligation in a body.

Q. Suppose you tell us the mechanics of that—how it is done?

A. Well, when we elect our officers, elect our officers and all, they give the members and officers their obliga-

tions. Each officer and each member has an obligation to take. It is all done in a group. It would take a week to give each one of them an obligation.

Q. So nothing was done by these people except to sign an application for membership?

A. Correct.

329 Q. That gave you, according to your story, sixty members who were employees of your company?

A. That was on Thursday night, yes.

Q. Wednesday night?

A. Wednesday night, yes.

Q. And Thursday, that is the following day, you had a strike out there, however; is that right?

A. In effect, yes.

Q. In effect, yes. With sixty members of your organization signed up on Wednesday night, on Thursday afternoon there was a strike; is that right?

A. Correct.

Mr. Woodle: O. K. That is all.

Trial Examiner Ringer: Anything further?

(No response.)

(Discussion off record.)

Trial Examiner Ringer: Next witness.

(Mr. Joseph Washko takes the stand.)

Trial Examiner Ringer: Were you sworn?

The Witness: No; I haven't been.

(Witness sworn by Trial Examiner Ringer.)

JOSEPH WASHKO, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Lodish) Will you state your full name

330 and address?

A. Joseph Washko.

Q. Your address?

A. 162 Egbert Road.

Q. Are you here in response to a subpoena, Mr.

Washko?

A. Yes, I am.

Q. I don't believe I have ever seen you before; have I?

A. I don't think I have ever seen you either.

Q. Are you working now?

A. Yes, I am.

Q. Are you getting paid on an hourly basis?

A. Yes, sir.

Q. How much are you making an hour?

A. Fifty-five cents.

Q. And is it a full-time job—you are working how many hours a week?

A. Forty.

Q. Do you know what the prospects are of your job—do you think it is a permanent job?

A. I was hired on this job temporarily.

Q. When did you get the job, Mr. Washko?

A. April 18th—19th, on a Monday.

Q. April 19th?

A. Yes.

Q. Did you previously work at the Electric
331 Vacuum Cleaner Company?

A. Yes, I did.

Q. What was the last day you worked there?

A. It was on a Friday. It was March 18th or 19th.

Q. Have you earned any other money to date besides the money you just talked about?

A. Yes, sir.

Q. How much more have you earned?

A. Oh, well, I can't say. I play in an orchestra on the side. I just job around, you see, odd jobs here and there.

Q. Has that been since April 5th that you have made money playing in an orchestra?

A. I have done that off and on for the last ten years.

Q. Have you earned any money as an orchestra man since April 5th?

A. Yes, I have.

Q. Will you, when you get a chance, figure out all of the money you have made from April 5th to date, please and submit that to me?

A. You want that today?
Q. Well, first chance you get.
A. From April 5th on?
Q. Yes.
A. O. K. I don't know how accurate it will be. I can't remember.

332 Q. Well, do the best you can.
A. O. K.

Q. How much were you earning per hour at the Electric Vacuum Cleaner Company?
A. Fifty-seven cents.
Q. How many hours a week?
A. How many hours a week?
Q. Yes.
A. Forty.
Q. Now, how long had you worked at the Electric Vacuum Cleaner Company?
A. Well, last September it was a year, so that was just about a year and four or five months, something like that.
Q. That is the total amount—a year and four or five months?
A. Yes.
Q. What was your job there?
A. I was working at the presses—punch presses.
Q. Punch press?
A. Yes.
Q. Now, you started then in September of 1935?
A. Yes; that is when it would be, '35.
Q. So that you were never a member of the MESA?
A. No; I was not.
Q. Were you a member of the A. F. of L.?

333 A. No; I was not.

Q. You didn't join the American Federation of Labor in 1935 at all?
A. No, sir; I was never approached.
Q. Nobody ever asked you to?
A. No.
Q. How about 1936?
A. Never then either.
Q. You worked all year 1936 without joining any

union?

A. I worked up until the last day. I never belonged to any union.

Q. And you were never approached?

A. No, sir.

Q. You never heard anything about a closed shop at Electric Vacuum Cleaner Company?

A. No, sir; nobody said anything to me.

Q. Now, coming to March, 1937, have you got that in mind?

A. What is it?

Q. March, 1937. You remember the plant closed. Your last day was March 19th?

A. That was on a Friday.

Q. Now, were you ever asked to join a union before March 19, 1937, by anybody—any union?

A. Any union?

Q. Yes.

334 A. Well, I joined one on my own accord, but I was never approached to join any.

Q. In other words, in your entire period at the Electric Vacuum Cleaner Company, you were never approached to join any union?

A. Never.

Q. All right. Which union did you join?

A. I joined the C. I. O. Union.

Q. When was that?

A. I put in an application with them.

Q. When was that?

A. I couldn't tell you the exact date.

Q. How many days before the plant closed, to refresh your recollection?

A. Oh, it must have been about four or five days, something like that.

Q. It was during the last week?

A. Yes.

Q. And did you sign an application at the plant?

A. No; I don't think—I don't know whether I signed it at home or in the plant.

Q. But you are sure you signed an application?

A. Yes; I signed an application.

Q. Did you later attend meetings?

A. Yes, I did.

335 Q. Were you an officer of the C. I. O.?

A. Well, I was elected as a Recorder.

Q. Of Local 720?

A. Yes.

Q. Now, after March 19th, how late were you in the plant that day?

A. March 19th. That was on a Friday?

Q. Yes.

A. Oh, I guess it was about one-thirty or two o'clock, something like that until they all left.

Q. What shift did you work on?

A. I worked on the day shift from seven-thirty to four.

Q. And when you left, it was a little early—it was before your regular shift was over that you left Friday?

A. Oh, yes.

Q. When did you next try to go back to work, if at all?

A. The following Monday. I mean during Sunday I saw this notification in the paper that we closed, so I didn't go near the plant at all, and I practically stayed away from it all the time. I was expecting to see a notification in the paper, and the only time I did approach it was when they agreed to go back that Monday. I went back and heard we were supposed to have a clearance card. I didn't know anything about that.

Q. By "that Monday"—you mean the day the

336 plant actually opened?

A. Yes, sir.

Q. April 5th?

A. Yes.

Q. Did you see the notice in the paper that the plant was going to open April 5th?

A. I saw it on the sign.

Q. Then you went down the morning of April 5th?

A. Yes.

Q. How did you know about a clearance card?

A. I didn't know anything about it until I went down to the gate and they told me I would have to have a clear-

ance card to get in.

Q. What did you do about that?

A. I went down and tried to get one that day, but I didn't succeed. I didn't get it.

Q. What did you do about it? How did you try? Where did you go?

A. I think it was to the Metal Trades.

Q. Do you remember where that is?

A. Ninth and—gee, I don't know the name of the street. I could find it.

Q. Describe it as best you can? Between what car lines?

A. Between what car lines?

Q. Yes. You don't know the name of the street,
337 but where is it located?

A. I think it is Euclid and St. Clair I guess it is.

Q. Between Euclid and St. Clair?

A. Yes.

Q. At any rate, did you go there to this Metal Trades?

A. Yes, sir.

Q. Did you see anybody?

A. The fellow I was supposed to see, he was not in.

Q. Who was that?

A. I think his name was Toth. He was supposed to be our representative. I didn't get a chance to see him.

Q. How many times did you try?

A. I was only there once that day.

Q. That is what day? April 5th?

A. Yes; Monday.

Q. When was the next time?

A. I went the next day. I went to the plant and that morning I saw Toth there at the plant.

Q. April 6th?

A. Yes.

Q. Yes?

A. And he told me to go down and see Mr. Lenahan. He gave me a card to see Mr. Lenahan at this—I guess it is the new place they have there on the corner. I don't know where it is. It is a white-front building. He wanted
338 me to go down and see him, so I went down and saw

Mr. Lenahan, and I just told him that Mr. Toth had sent me up, and he asked me what I was there for and I told him I was from the Electric Vacuum Cleaner Company and I wanted to get a clearance card. He didn't know what to do about it and he just told me to go back to the plant and tell them to put me back to work, but I didn't know what to do about it. I didn't have a card and I knew I couldn't get in, so I think it was the short fellow with him that told me to not go back to the plant, but to get my clearance card from Toth, so I waited around all that morning until afternoon. I think it was until about one o'clock or so. No—I went up to the Metal Trades and saw Mr. Toth and they told me he had a meeting or conference or something, that he would be back later; that I should wait for him.

Q. Was this on April 8th?

A. On a Tuesday.

Q. Yes?

A. So I waited for him.

Q. How long did you wait?

A. I waited from the time I saw Mr. Lenahan in the morning, about nine o'clock, I waited until about one-thirty.

Q. You waited about four hours in that one place?

A. Yes, so I could see Toth.

Q. Yes?

A. Then I filled in an application to the American
339 Federation of Labor and he issued me a clearance card, so Wednesday morning I went into the plant and I thought I would go to work, and I was told that there was nothing open for me.

Q. Who told you that?

A. My boss told me that.

Q. Who was your boss?

A. Sam Wagner.

Q. Yes?

A. He says that there was nothing open, that they were filled up, then, that I should see Toth about a job. I went outside the gate where he was, and he told me that I should go back and see Sam. Sam told me that I would be called

back to work when they wanted me.

Q. Was that the last?

A. That was on a Tuesday I think it was, so I showed up a couple days after that and there was nothing to do and so I just waited until they called me back, and they didn't do anything more about it.

Q. You have never heard from anyone about it?

A. I have heard rumors that I should go back there, but I was never actually written a letter or approached to come back to the Electric Vacuum Cleaner Company.

Q. There is just one more question I would like to ask you: Between March 14th and April 5th, you testified that you had attended some Electrical Workers' meetings.

340 Now, do you remember attending—can you state now when you attended a meeting that was the largest in point of crowd?

A. Gee, I couldn't tell you the date.

Q. Can you place it approximately?

A. Well, it was up there where we usually held them, downstairs in that basement on 152nd Street.

Q. What is the name of that place?

A. Arnold Hall I guess it is.

Q. Do you remember the day of the week that the plant closed?

A. I couldn't tell you.

Q. Do you remember what happened at the meeting?

A. I think that was the day that they were going to submit the resignations to the American Federation of Labor.

Q. Were you present at that meeting?

A. Yes, sir; I was.

Q. About how many people were there?

A. That is hard to judge. I imagine it must have been about between three and four hundred anyway.

Q. You said something about submitting resignations; will you tell us what happened at the meeting in that respect? Describe the procedure.

A. You mean right from the start?

Q. No. Just what happened about this resignation business that you mentioned?

A. Well, these people, the employees there I guess, they wanted a—

341 Q. I don't care what you guess and I don't care what they wanted to do. Just tell me what you saw. Did people get up and down? Who talked? Did anybody use pencils?

A. Well, they called the names off.

Q. Who called the names off?

A. I think it was Ed Koutnik.

Q. While he was calling names off, what happened?

A. They got the numbers of their Locals, and they just marked them down.

Mr. Spieth: Your Honor, I object to this line of testimony. Mr. Washko said that nothing was done about that after this poll was taken.

Mr. Lodish: Of course, there is a letter in evidence, written to the company.

Trial Examiner Ringer: Read the last answer, please.

(Last answer read by the Reporter.)

Trial Examiner Ringer: Objection will be overruled on that.

Mr. Lodish: That is all.

Trial Examiner Ringer: Anything further?

Mr. Carey: No questions.

Trial Examiner Ringer: No questions by you?

Mr. Carey: No, sir.

Trial Examiner Ringer: Respondent?

Mr. Spieth: None.

342 Trial Examiner Ringer: That is all.

Mr. Spieth: Just a minute.

(Discussion off record.)

Mr. Spieth: I have just one or two questions.

Trial Examiner Ringer: Take the stand again, Mr. Washko.

Cross-examination

Q. (By Mr. Spieth) You say you were not notified to return to work?

A. No, sir; I was not.

Q. Didn't you get any message from your foreman that

you were to come back and go to work?

A. I just heard rumors. I heard a few fellows say that I could go back to work, but I was not actually notified. He told me that he would tell me when to come back to work, and I waited for that.

Q. Didn't these men from whom you heard rumors tell you that the foreman wanted you to go back to work?

A. That is what I heard. He didn't say to come back to work. He said he wanted to see me.

Q. You didn't go back to work though?

A. No; I didn't, because he didn't tell me himself.

Q. Didn't you send back word that you were playing in an orchestra and you didn't want to come back?

A. I told him I was just jobbing around.

Mr. Spieth: That is all.

343 Trial Examiner Ringer: Next witness.

(John Kern takes the stand.)

Trial Examiner Ringer: Have you been sworn?

Mr. Lodish: Were you sworn, Mr. Kern? Did you take the oath?

Mr. Kern: Not yet.

(Witness sworn by Trial Examiner Ringer.)

JOHN KERN, called as a witness for the National Labor Realtions Board, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Lodish) Are you here in response to a subpoena, Mr. Kern?

A. Yes.

Q. Will you state your full name and address, please?

A. John Kern.

Mr. Spieth: I can't hear you.

The Witness: John Kern.

Q. (By Mr. Lodish) K-e-r-n?

A. Yes.

Q. Your address?

A. 1347 East 188th Street.

Q. Are you working now, Mr. Kern?

A. Yes.

Q. How much are you making, how much an hour?

A. I average twenty-five dollars a week.

344 Q. You average twenty-five dollars a week?

A. Yes.

Q. How long have you been working—when did you get the job that you now hold?

A. The 28th of April.

Q. April 28th?

A. Yes.

Q. Were you hired on a permanent or temporary basis?

A. I believe it was temporary.

Q. You are not sure?

A. I am not sure.

Q. Have you made any other money besides the income from that job since April 5th?

A. No, sir.

Q. Did you previously work at the Electric Vacuum Cleaner Company?

A. Five and a half years.

Q. Five and a half years?

A. Yes.

Q. How much were you making the last week there—how much per hour?

A. I was getting fifty-eight cents an hour.

Q. Fifty-eight cents?

A. Fifty-eight.

Q. And how many hours a week?

345 A. Forty.

Q. What was your job there?

A. Tapping machine operator.

Q. Did you ever belong to any union before 1937?

A. Well, I did belong to the MESA.

Q. That was in 1934—up to the summer of 1935?

A. I don't remember just how long it was.

Q. Do you remember the strike in 1935?

A. Yes.

Q. You were a member of the MESA until that strike?

A. Yes.

Q. Now, after the strike was over, did you join the American Federation of Labor?

A. No, sir.

Q. Were you asked to?

A. Well, we were asked several times, but well, I couldn't afford it. That is the picture.

Q. My question was whether you joined?

A. No; I didn't.

Q. But you were asked?

A. I were asked—I was asked, yes.

Q. In 1935?

A. Yes—no; not in 1935.

Q. That was my question. After the strike was settled in the summer of 1935, until the end of 1935, did
346 you ever join the American Federation of Labor? Were you ever asked to?

A. Not until 1936, the latter part of 1936.

Q. All right. Well, when were you asked in 1936, approximately?

A. In the wintertime it was.

Q. In the wintertime?

A. Yes.

Q. So that after the strike in July, 1935, until the winter of 1936, approximately a year and half, you belonged to no union?

A. No union.

Q. Do you still pay dues in the MESA?

A. Well, no, I didn't, because it just seemed to fade out of the picture.

Q. But for a year and a half you belonged to no union; is that right?

A. Yes.

Q. During that year and a half, were you approached, asked to join the union?

A. I don't believe so.

Q. Did anybody ever tell you that you had to join the union?

A. No, sir.

Q. Did you ever hear anything about a closed shop?

A. No.

Q. All right. Now, in the winter of 1936, what
347 happened? You say you were approached?

A. Yes, I was approached by John Toth, who came and asked us and I told him, "Well, it is up to the fellows. If they go and join, I will join too."

Q. What fellows were you referring to?

A. The fellows that I work with.

Q. In your department?

A. Yes.

Q. What is that called? Is that a Tapping Department?

A. It is the Machine Shop.

Q. You were in the Machine Shop?

A. Yes.

Q. You told Toth that if the rest joined you would?

A. Yes.

Q. Did you join?

A. No.

Q. Did he tell you that you had to join?

A. No.

Q. All right. Now, we get to March of 1937. Have you got that in mind—March 19th, Friday, was the last date the plant was open?

A. Yes.

Q. Were you approached to join the union that week—that last week?

A. Yes.

348 Q. Who approached you?

A. John Toth.

Q. Do you remember when he approached you for the first time in March?

A. No; I don't remember.

Q. About how long before the plant closed—how many days?

A. A couple or three days.

Q. About three days?

A. About two or three days.

Q. What did you say when he approached you?

A. Well, he didn't come to me personally really then, but he was around trying to sign the fellows up.

Q. In your department?

A. Yes, in my department.

Q. Didn't he ask you personally?

A. Not personally, no.

Q. Did you hear him ask anybody else anything?

A. Well, the fellows were saying that he wanted to sign them up. That is all I know.

Q. But you were not approached personally?

A. No.

Q. All right. Now, did you take part in the sit-down strike?

A. Yes.

Q. You sat in all night?

A. Yes.

349 Q. What date was that? Thursday, was that?

A. Yes; Thursday, Friday.

Q. Thursday, March 18th the evidence already showed. Then you were in the plant Friday?

A. Yes.

Q. When did you leave the plant? Friday?

A. I would say it was approximately two-thirty or a quarter to three.

Q. When everybody else did?

A. Yes.

Q. And by the way, did you ever join the C. I. O.?

A. Yes; I was approached by fellows on Friday, Friday morning.

Q. The day after the sit-down strike?

A. Friday morning, while we were in the plant, there was applications around.

Q. Did you sign up then?

A. Yes.

Q. Did you later attend meetings?

A. Well, I did go to some, yes. That is after I was out of the plant, with the rest of the boys.

Q. All right. Now, after you left the plant Friday, March 19th, when did you next try to get back to work?

A. When the shop opened up.

Q. April 5th; you mean the day it actually opened?

350 A. I went to a meeting and I was told that everybody was supposed to go back to work the 10th; that is all I know.

Q. Everybody was supposed to go back to work April 10th?

A. Yes. That was told to us at the meeting.

Q. Where was this meeting, do you remember?

A. Up in the Old Postoffice at St. Clair Avenue.

Q. Who told you that about the 10th?

A. Well, we had a meeting there.

Q. Who said you were supposed to go to work the 10th?

A. I believe Mr. Pascoe or the chairman of the Local. I don't remember.

Q. One of the officers?

A. Yes.

Q. Anything said about cards?

A. Yes; we were told to go downtown to the Metal Trades Hall and get a card.

Q. All right: What did you do about that?

A. I tried to get a card—

Q. When?

A. —and I was told that the plant was filled up right now and I wouldn't be able to get my card unless I was called.

Q. I want to know when this was that you tried to get a card?

A. I think it was the 7th or 8th or something like that. I don't remember.

Q. The middle of the week about?

351 A. Yes.

Q. About Wednesday or Thursday after the plant opened?

A. Yes.

Q. And who told you that you couldn't get a card?

A. John Toth said that the plant was all filled up.

Q. He told you that?

A. Yes. And until there was a vacancy he couldn't give me a card.

Mr. Lodish: Will you read that answer, please?

(Last answer read by the Reporter.)

Q. Is that what you just said?

A. Yes.

Q. All right, now, what did you do after that?

A. Well, I approached him again.

Q. When was this?

A. About a week later, and that was late in the afternoon around four-thirty.

Q. And where was this?

A. At the Metal Trades Hall.

Q. What was the conversation?

A. There was not much of a conversation. He was busy. He was in a conference, and he told me he didn't have any more cards, he would have to get some made up, and he told me I would have to see him at the factory the following Monday. When I did see him, he referred
352 me to Mr. Wilson and Mr. Wilson was busy at the time. I talked to Mr. Waterbury—he came out—and he told me that he couldn't do anything for me, that they were doing all the hiring downtown.

Q. Mr. Waterbury told you that?

A. Yes; Mr. Waterbury told me that.

Q. Who is he—what is his position?

A. I don't know whether he is the secretary or what. I couldn't tell you that.

Q. Is he an official of the company, to your knowledge?

A. Yes.

Q. Does he have the right to hire and fire, as far as you know?

A. I couldn't tell you that; I imagine he does.

Q. All right. What other efforts did you make after that, if any?

A. I was referred back to the Metal Trades Hall again.

Q. By Mr. Waterbury?

A. Yes.

Q. All right. Did you go down there?

A. I did go down and I got my card.

Q. You got your card?

A. Yes.

Q. Then what did you do?

A. I was told to report to work on a Monday.

Q. Do you know what Monday that was? The
353 plant opened April 5th. You say the first time you saw him was about Wednesday or Thursday?

A. I got my card about the 24th.

Q. That was on a Saturday?

A. Yes.

Q. I see.

A. The following Monday I was supposed to go to work.

Q. April 26th?

A. Yes.

Q. All right. Did you go to the plant April 26th?

A. Yes.

Q. And what happened?

A. My foreman had to take me up to the superintendent?

Q. Who was your foreman?

A. Sam Wagner.

Q. You say he took you up to the superintendent?

A. Yes.

Q. Who was the superintendent?

A. George Paulus.

Q. What happened there?

A. Mr. Paulus told me that he would like to put me back to work, but he didn't have a vacancy right then, and he told me as soon as there was a vacancy, he would notify me.

Q. Have you heard anything since?

A. No.

354 Mr. Lodish: That is all.

Trial Examiner Ringer: Any further questions?

Mr. Carey: No questions.

Trial Examiner Ringer: Respondent?

Mr. Spieth: No.

Trial Examiner Ringer: Any questions by either of the other sides?

Mr. Woodle: No.

Trial Examiner Ringer: I think we will have time for

another witness.

Mr. Lodish: That is all. (Addressing Mr. Kern) Thanks very much.

(Leo Pierret takes the stand.)

Trial Examiner Ringer: Have you been sworn?

Mr. Pierret: Yes, I have been sworn.

Trial Examiner Ringer: Take the stand.

LEO PIERRET, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Lodish) Will you state your full name and address, please?

A. Leo Pierret.

Q. And your address?

A. 1130 East 148th Street.

355 Q. Is that P-i-e-r-r-e-t?

A. Yes.

Q. Are you working now, Mr. Pierret?

A. No, sir; I am not.

Q. Did you formerly work at the Electric Vacuum Cleaner Company?

A. Yes.

Q. How long had you worked there altogether?

A. A month and a half.

Q. A month and a half altogether?

A. Yes.

Q. What was the last day you worked there?

A. I don't remember the date, but it was that Friday.

Q. Friday, March 19th?

A. I believe so; yes, sir.

Q. How much were you making an hour?

A. Fifty-six cents.

Q. And forty hours a week?

A. Yes, sir.

Q. Have you earned any money or gotten any relief since that day?

A. I earned eight dollars, but I haven't gotten any relief.

Q. Eighty dollars?

A. Eight dollars.

Q. Eight dollars?

356 A. Yes, sir.

Q. The total amount you have earned is eight dollars, to date?

A. Yes.

Q. Doing odd jobs, I presume?

A. Yes.

Q. What was your work at the plant?

A. I was supposed to be an inspector, but I did really filing.

Q. Filing?

A. Filing bottoms.

Q. You must have started at about February 1st?

A. Around that time.

Q. Did you join any unions when you started working or after you started working?

A. Yes, I did.

Q. What did you join?

A. Federation of Labor. The Polishers' Union.

Q. How long after you had been working there did you join it?

A. About two weeks.

Q. Who asked you to join?

A. I asked to join myself.

Q. You asked to join yourself?

A. Yes, sir.

Q. You got a card at the plant and you joined?

A. No, I didn't.

Q. You didn't?

357 A. Just the application card—is that what you mean?

Q. Well, you joined it?

A. Yes.

Q. All right. Then you weren't, I presume, ever approached to join the American Federation of Labor later, because you already belonged?

A. Well, that is a funny proposition. I asked to join the union, but I wanted to join the Federal Union because it was a dollar cheaper in dues and a dollar cheaper in initiation fee.

Q. I see. You wanted to join the Federal Group of the American Federation of Labor, and you told them you wanted to join the Polishers?

A. Yes.

Q. So you joined the Polishers?

A. Yes.

Q. I don't care about that. After you did join the union, nobody talked to you about the union any more—you were a member?

A. That is right.

Q. Did you take part in the sit-down strike?

A. No.

Q. You were not in that department?

A. No.

Q. But you did work, or at least you were present in the plant Friday, March 19th; weren't you, the next day?

358 A. Yes, sir.

Q. Did you work that day?

A. Four hours.

Q. What shift was your regular shift?

A. First shift.

Q. And you worked four hours?

A. Yes.

Q. Then what happened?

A. Well, one of the business agents or somebody come in and told us to go home.

Q. One of the business agents of the American Federation of Labor?

A. Yes, sir.

Q. Told you to go home?

A. Yes.

Q. Did you thereafter join any other union?

A. Yes.

Q. What did you join?

A. C. I. O.

Q. When?
A. Right affer they told us to go home.
Q. That Friday?
A. Yes.
Q. Were you still in the plant?
A. Yes.
359 Q. You signed a card in the plant Friday?
Q. Yes.
Q. Joining the C. I. O.?
A. Yes.
Q. Did you then go home?
A. About twelve o'clock, yes.
Q. You left before everybody else did, then, didn't you?
A. Yes; I had to.
Q. Why did you have to?
A. My wife was supposed to have a baby.
Q. And you went to the hospital?
A. No, sir; it was a false alarm.
Q. Anyhow, you left because of your wife's condition?
A. Yes, sir.
Q. Did you see the newspaper notices about the closing and the opening of the plant?
A. Yes.
Q. Did you try to get back to work later?
A. Yes.
Q. When was that?
A. When the C. I. O. told us to go back—that is, the officials.
Q. You mean at a meeting—
A. Yes.
Q. —you were told to go back?
360 A. Yes.
Q. Do you remember the date of that?
A. No, I don't.
Q. How about the first day the plant was opened, April 5th, do you remember that?
A. Yes.
Q. Did you do anything that day?
A. Oh, yes; I went to the gates.

Q. What happened at the gates?

A. I was refused admittance.

Q. What was said to you?

A. They asked me if I had a card.

Q. And you didn't.

A. No.

Q. Did you try to get one then?

A. Yes.

Q. What did you do?

A. I went down the street and I went up to the Polishers' Local and they refused me the card.

Q. Who refused you the card?

A. One of the committeemen from the shop.

Q. Do you know who it was?

A. I think it was Lowrence; I am not sure. I don't know the man very well.

Q. This was at the Metal Trades?

361 A. Yes.

Q. What did you do next with regard to attempting to go back to work?

A. I kept going down there because I knew if I didn't have a card I couldn't get back to work.

Q. About how many times did you go there?

A. About three or four times.

Q. When was the last time?

A. The last time I went down was when the Labor Board told me to go down.

Q. The Labor Board?

A. I think you gave orders to send us down to get our jobs back; I went to the company and the company told us to get a card, so I went down again.

Q. Were you in the Labor Board office?

A. No, I wasn't.

Q. Oh, you just heard that the Labor Board—

A. Yes.

Q. Did you hear that Ralph Lind had suggested your going back?

A. That is what I heard; yes.

Q. Well, my name is not Lind.

A. Well—

Q. What did you do after that morning that you testified about, in which you were told to go back to the
362 plant? Did you go back to the plant after that meeting?

A. Yes.

Q. Do you remember that date?

A. No; I don't remember the date.

Q. What day of the week was it, do you remember the day of the week that meeting occurred?

A. I don't remember the date.

Q. Do you remember the day of the week? Was it a Monday or a Saturday?

A. I couldn't state for sure, so I won't say.

Q. Did you go down to the plant?

A. Yes, I did.

Q. What happened there?

A. The Superintendent Paulus told us that we had to have a card.

Q. Did you see Paulus?

A. Yes.

Q. Personally?

A. Yes.

Q. And you heard him say that?

A. Yes.

Q. Then what did you do?

A. I went down to get a card the same day.

Q. Yes?

A. And I was told to see Muehlhoffer, and every
363 time I went down there he was out of town.

Q. And you couldn't get to see Muehlhoffer?

A. I couldn't get to see him. I went down about three times after that.

Q. Now, you were a member of the American Federation of Labor?

A. Not a full-fledged member.

Q. What do you mean by that?

A. I only paid two and a half dollars initiation fee. I didn't pay any dues.

Q. All right. You say March 19th you joined the C. I. O.?

A. Yes.

Q. Now, did you attend any meetings later?

A. Yes.

Q. Did you ever attend a meeting in which you were asked—I withdraw that. Did you ever attend a meeting at Arnold's home at which a large crowd of people attended?

A. Yes.

Q. Did anybody ask you what you wanted to do about the American Federation of Labor or C. I. O. matter?

A. (No answer.)

Q. Tell us what happened at that meeting.

A. All kinds of confusion. They just asked us—oh, I couldn't say. I don't remember that clearly.

Q. Did anybody ever call your name off at that meeting?

364 A. I was not at that meeting that the names were called off, but my name was called.

Q. How do you know your name was called?

A. Because my dad was there.

Q. Your dad was there?

A. Yes.

Q. Does he work at the company?

A. Yes.

Q. And he took care of your end of it too at that meeting?

Mr. Spieth: Oh, your Honor, I object to the form of the question. I think that is going too far.

Mr. Lodish: I will withdraw it.

Q. (By Mr. Lodish) Did you tell your dad anything about acting for you when he went to that meeting?

A. No.

Q. You didn't?

A. No.

Q. All you know is what your dad told you after he came out of the meeting?

A. Yes.

Q. Did he tell you that your name was read off?

Mr. Spieth: I object, your Honor.

Trial Examiner Ringer: Overruled.

A. Yes.

Q. (By Mr. Lodish) Did he say that he did any-
365 thing when your name was read off?

A. No.

Q. He didn't?

A. No.

Mr. Lodish: That is all.

Trial Examiner Ringer: Any questions by any others?

Direct Examination

Q. (By Mr. Carey) What type of work did you perform for the Electric Vacuum Cleaner Company?

A. I was supposed to be an inspector, but I was a filer, really. Just a sort of laborer.

Q. Did you do metal polishing, buffing, or plating?

A. No.

Q. You testified you made an effort to join the Federal Labor Union?

A. I did.

Q. You testified your purpose in doing that was because you were not a polisher, buffer, or plater?

Mr. Spieth: I object, your Honor. He said the dues were different, and he wanted to join the cheaper organization.

Trial Examiner Ringer: I will overrule the objection. That can be gone through if you want to cross-examine on it. Go ahead.

A. Yes.

Q. (By Mr. Carey) Did you pay the full initiation?

366 A. No.

Q. You testified you paid no dues whatsoever?

A. No.

Q. Did you know the initiation of the Metal Polishers' Union?

A. Yes.

Q. What was the initiation?

A. My initiation was three and a half.

Mr. Carey: That is all.

Trial Examiner Ringer: You are excused, Mr. Pierret. We will adjourn at this time until one-thirty p. m. I wish

all of you would make a note of that so that we can meet at one-thirty without any uncertainty about it. We will plan now, until different instructions, to meet each afternoon at one-thirty and run until four-thirty. And mornings, ten to twelve. I think that will be satisfactory.

(Thereupon, at 12:07 o'clock p. m. a recess was taken until 1:30 o'clock p. m.)

After Recess

(The hearing was resumed at 1:30 o'clock p. m. pursuant to the taking of recess.)

Trial Examiner Ringer: Are there any additional questions to be asked of Mr. Pierret?

Mr. Woodle: Just three or four questions.

Trial Examiner Ringer: Will you take the stand again then, Mr. Pierret?

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(Witness resumes the stand.)

Cross-examination

Q. (By Mr. Woodle) You testified that you belonged to the Polishers' Union, Mr. Pierret?

A. Yes.

Q. It is true, is it not, that you worked in the polishing room of the Electric Vacuum Cleaner Company?

A. Yes.

Q. Polishing Department, as it is called?

A. Yes.

Q. And your work in that department included inspecting polishing work that had been done by the polishers?

A. Yes.

Q. That is right, isn't it?

A. Yes, sir.

Q. And therefore, when you attempted to join or asked to join the Federal Labor Union, you were told that because of the nature of your work and where you were working, you had to join the Polishers' Union?

A. Not the nature of the work. It was because I was working in the polishing room.

Q. I see. It was because you were working in the

polishing room?

A. Yes.

368 Q. And all the people that were working in that particular room or department were supposed to belong to the Polishers' Union if they belonged to any?

A. They all did. The same workers that did not have any more than I had to do belonged to the Federal.

Q. In other departments?

A. No; the same department. The only reason that that place was down there anyhow was for the inspectors that they didn't have any other room to keep them; that is, to have the work done up there.

Q. You worked there two weeks before you were solicited to join any union?

A. Yes.

Q. Did you know that that was in accordance with the usual practice in that plant, that new employees were permitted to work there or did work there for about two weeks before they were asked to join the union?

A. No, I didn't.

Q. You didn't know about that?

A. No.

Q. Have you found out about that since?

A. Well, I joined.

Mr. Woodle: That is all.

Trial Examiner Ringer: That is all. Call your next witness.

369 (Mr. William H. Fogarty takes the stand.)

Trial Examiner Ringer: Were you sworn, Mr. Witness?

The Witness: No.

(The witness was sworn by Trial Examiner Ringer.)

WILLIAM HAROLD FOGARTY, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Lodish) Will you state your full name and

address, please?

A. William Harold Fogarty, 6509 Linwood Avenue.

Q. Are you working now, Mr. Fogarty?

A. At the present time, part time job.

Q. A part time job?

A. Yes, sir.

Q. When did you get that job?

A. A week ago yesterday.

Q. A week ago yesterday?

A. Yes; about two weeks ago yesterday, pardon me.

Q. That would be May 31st?

A. Yes, sir.

Q. What are you earning at that job?

A. So far I have earned eight dollars and ninety cents.

Q. Altogether?

A. That is, that is what I have collected so far.

370 Q. Have you earned anything else besides that from any source?

A. No, sir.

Q. Since you have worked at the Electric Vacuum Cleaner Company?

A. No; sir.

Q. Now, you were an employee of the Electric Vacuum Cleaner Company?

A. Yes, sir.

Q. When was the last day you worked there—was it the Friday that it closed?

A. March 19th.

Mr. Spieth: I can't hear him.

Mr. Lodish: March 19th.

Trial Examiner Ringer: Will you try to speak up a little bit? It is pretty hard to hear in here.

Q. (By Mr. Lodish) How long had you worked there?

A. Three years this coming September.

Q. What were you doing there—what was your job?

A. Drill press operator.

Q. How much were you getting an hour?

A. Fifty-eight cents an hour.

Q. Forty-hour week?

A. Forty hours a week.

Q. What was the first union you belonged to as
371 an employee of the Electric Vacuum Cleaner Company?

A. The M. E. S. A.

Q. Then did you go out on strike in 1935?

A. Yes, sir.

Q. About how long did that strike last?

A. Around ten weeks, I think.

Q. About ten weeks?

A. Yes.

Q. Then the strike ended with an agreement by the American Federation of Labor—do you know about that?

A. Well, at the time, I didn't get back in there until the week afterwards.

Q. You didn't get back until a week after the strike ended?

A. Yes, sir.

Q. Was that for personal reasons of your own?

A. Yes, sir.

Q. You were away some where or something of that kind?

A. My mother died.

Q. Oh, you had a death in the family?

A. Yes.

Q. What you came back a week later, did you go to work?

A. Yes, sir.

Q. Did anybody question you about your status?

A. No, sir.

372 Q. You, of course, no longer paid any dues to the MESA, did you?

A. No, sir.

Q. Did you join the American Federation of Labor?

A. No, sir.

Q. Did anybody ask you to?

A. No, sir.

Q. Now, does your answer that you didn't join the American Federation of Labor and were not asked to, hold for all of 1935?

A. Yes, sir.

Q. How about 1936, in that respect?

A. In 1936 I joined the American Federation of Labor around the first of the year.

Q. The first of the year of 1936?

A. Near the first of the year.

Q. That is last year—not this year?

A. '37.

Q. You joined the American Federation of Labor the first part of this year?

A. Yes.

Q. 1937?

A. 1937, yes, sir.

Q. I am asking you about 1936. Is it a fact that you were not a member of the Union all year?

373 A. No, I was not.

Q. And had you been asked at all during the year?

A. No, sir.

Q. Did you ever hear anything about a closed shop?

A. No.

Q. You say you joined the American Federation of Labor early this year?

A. Yes.

Q. Now, tell us about that. What was the procedure there—what happened?

A. Well, I saw the business agents coming around through the shop and they was asking different ones to sign up. A fellow came over to me and asked me to sign up.

Q. Who was that; do you know?

A. A fellow by the name of John Toth.

Q. Do you remember when that was?

A. I was around January, but what date I couldn't say.

Q. All right.

A. And I told him I would see him later, I was busy at the time. The fellow working next to me was an American Federation of Labor man; he told me I had better sign up.

Q. He was an employee?

A. Yes.

Q. Not an organizer?

A. No. He was an employee right next to me.

374 Q. And he told you you had better sign up?

A. Yes. And I asked him why. He said: "Some of these days they are going to picket that place, and if you don't have a card you can't get in.

Q. Did you then join?

A. The next time Johnny Toth came over, I asked him for a card and he handed it over to me and I signed it and gave it back to him.

Q. So the next time, when you joined, you called him and asked him for a card?

A. Yes; I called him.

Q. Did you ever do anything about your American Federation of Labor membership?

A. I signed the card and about three weeks later I asked him when I would get my book or my card, and he said to wait a while. That is all I ever saw.

Q. Did you ever pay any money?

A. Never paid no contracts, initiation fee, or nothing.

Q. You never paid anything and never got a book?

A. No.

Q. Now, did you ever join any other union?

A. I joined up with the C. I. O.

Q. When was that?

A. The Thursday before Good Friday, at noon, at lunch time.

Q. Thursday at lunch time?

375 A. Yes.

Q. That was the day of the sit-down strike?

A. Yes; that was the day of the sit-down strike.

Q. And you signed up in the plant; did you?

A. Yes, sir.

Q. And then after that did you attend C. I. O. meetings?

A. Yes, sir.

Q. Did you ever attend a meeting where you were asked whether you wanted to drop out of the American Federation of Labor?

A. Yes, sir.

Q. When was that meeting, and what happened with respect to what I just asked you?

A. The date of that meeting I couldn't tell you.

Q. Was that while the plant was closed?

A. That was while the plant was closed down.

Q. Do you remember the day of the week?

A. I am not sure about that.

Q. All right; go ahead.

A. (No answer.)

Q. About how many people were there in your judgment?

A. I judge close to five hundred.

Q. What were the mechanics of your showing your union affiliation—what was done; what happened at the meeting?

A. (No answer.)

376 Q. Do you understand my question?

A. I don't understand it.

Q. Did somebody write something; did somebody ask you something? Just describe what happened.

A. They asked us if we wanted to hand in our resignation to the American Federation of Labor.

Q. Who asked you that?

A. One of the organizers.

Q. Then what happened? What was done?

A. And they had a list of our signatures—that is, our signature blanks for the Union, and they asked us if we wanted to send in our resignation to the American Federation of Labor, if we would raise our hand and say so at the time our name was called. When my name was called I said: "Yes."

Q. Did you hear other people answer "yes" when their name was called?

A. Yes, sir.

Q. Did you recognize any of those people as being employees of the Electric Vacuum Cleaner Company?

A. Yes; quite a few.

Q. That you recognized of your own knowledge?

A. Yes, sir.

Q. Now, did you notice the articles in the newspapers about the plant going to be closed and going to be opened?

A. The Friday that we come out they said some-

377 thing about us going back to work on Monday, and in Sunday's paper there was an item in there about that the plant would be closed until further notice.

Q. Now, did you notice the article in the newspaper that the plant would open Monday, April 5th?

A. There was an article—in what paper, I don't know—but there was an article in there about the plant opening up April 5th, that if we were with the American Federation of Labor we would have to have a card to enter the plant.

Q. All right. What did you do about that?

A. We went out to the plant.

Q. Whom do you mean by "we"? Who else went with you?

A. The fellows I most generally ride with. There is two or three of us.

Q. Are they working there now, any of them?

A. Yes.

Q. Both of them?

A. Yes; both of them.

Q. Go ahead. You went to the plant, you say.

A. We went out to the plant.

Q. Was that Monday, April 5th?

A. Monday, April 5th.

Q. Yes?

A. And they had formed sort of a picket line out there of American Federation of Labor members, so we

378 come down to the plant and it looked like it was going to be a skirmish or something like that. I didn't pay much attention to it then until I found out the other fellows' impression about it. They said hey had been in one or two melees out there. So I went back home. I didn't want to get into it.

Trial Examiner Ringer: Pardon me. They can't hear you back there. Will you try, if you can, to open your mouth a little wider when you say your words. It is awfully hard in here to hear.

Q. Now, what did you do with reference to trying to get back to work after that, if anything?

A. There was a C. I. O. meeting called on a Thursday.

Q. Was that the Thursday after the plant opened?

A. Yes, it was.

Q. That would be Thursday, April 8th?

A. It was the Thursday after the plant—I couldn't tell you just what date.

Q. The calendar shows that that Thursday in April 8th. All right.

A. And at that meeting it was stated to us that if we would go down on a Monday morning to get our card we would be admitted to the shop to be put back to work, so I went—we was supposed to go to the shop, the way I understood it, so I went to the shop that Monday morning.

Q. That was April 12th?

379 A. Yes.

Q. Yes?

A. So we could not get in.

Q. Did someone stop you at the gate?

A. There were four or five men standing there with American Federation of Labor badges and we couldn't get by them.

Q. What happened there?

A. They asked us to show the American Federation of Labor card, and we didn't have it and I asked to see Johny Toth. I heard he was in the shop. And he said I would have to wait out there or go down to the hall.

Q. Then what did you do?

A. I went down to the hall and was there from about ten o'clock until two o'clock in the afternoon.

Q. That same Monday?

A. That same Monday.

Q. Did you get to see anybody?

A. I got to see Johnny Toth, and I asked him about my card, that I had already signed for the card quite a while before that. He told me I better call him up and he would let me know whether I could go into work. So I come back out home.

Q. All right. What was the next thing you did? That was Monday morning, April 12, and what was the next step?

A. Well, I got word through one of the fellows over to the house that told me that we was to go over to the

380 shop—I think that was on the 23rd of April—that we was to go over to the shop, and we went up to the office and—

Q. By "we," you mean the same fellows that you talked about before?

A. No; these four or five fellows.

Q. Well, are any of you out of work now?

A. Yes.

Q. Who else was with you that is still out of work?

A. Johnny Lowrence, for one, and Ed Koutnik. I know, but I can't remember.

Q. Just whatever you can remember. Go ahead. I interrupted you.

A. So we went up and I saw the superintendent, George Paulus, and he asked me a few questions; I couldn't remember just what they were. He asked me if I had got my card and I told him I had not received no card as yet, that I went down a couple times and Johnny Toth was not in. He told me to go down and get a card. That was in the afternoon. Right after noon, so that same afternoon I went down and Johnny Toth gave me my clearance card, or whatever it was, my American Federation of Labor card.

Q. So you got a card from Toth, April 23rd?

A. Yes.

(The witness hands a card to Mr. Lodish who examined it.)

Mr. Orgill: May I see it?

381 (Mr. Orgill examines the card referred to.)

Q. (By Mr. Lodish) This card that you handed me indicates that you received it from John Toth, Junior, April 23, 1937, and is an employment clearance card of the Cleveland Metal Trades Council. What did you do after you got that card?

A. George Paulus told me to get the card and come back out there. So the next morning I was there regular starting time and I went up to see him and he told me there was not anything yet, but just as soon as the first opening was open that he would call me and let me know.

Q. You were in what department?

A. Drill Press.

Q. Is that the Machine Shop?

A. Machine Shop.

Q. Do you have any knowledge as to whether any men have been hired in that department since that date?

A. A week after that I didn't hear from him and I went back again to see him and I saw him out in front of the office upstairs and I asked him if there was anything open yet and he didn't say anything; he just shook his head and walked out of the office and I came out. Since then I have heard they hired out there, but I haven't seen the names there.

Q. You don't know anything about that?

A. No.

Mr. Lodish: That is all.

382 Mr. Orgill: Are you offering the card?

Mr. Lodish: Not unless you want it.

Mr. Orgill: Yes.

Mr. Lodish: Do you need that card for any purpose, Mr. Fogarty?

The Witness: I would like to keep it.

Mr. Lodish: I don't see any reason why it can't be read into the record. In addition to what I have already read into the record, it also indicates your name, William Fogarty, and that you are a member in good standing in Local Number 1130 I. A. of M. and printed thereon is the statement: "Recommended for employment at Electric Vacuum Cleaner Company."

Q. (By Mr. Lodish) And you have heard nothing since that date?

A. No, sir.

Q. Have you paid any dues to the American Federation of Labor since you joined it?

A. No dues; no.

Q. Since January of 1937?

A. No, sir.

Q. You paid nothing at all?

A. Nothing at all.

Mr. Lodish: That is all.

Trial Examiner Ringer: Mr. Griff or Mr. Carey?

Mr. Carey: No questions.

383 Trial Examiner Ringer: Respondent?

Mr. Spieth: No questions.

Trial Examiner Ringer: American Federation of Labor counsel?

Mr. Wachtel: No questions.

Trial Examiner Ringer: I would like to ask one.

Examination by Trial Examiner Ringer

Q. (By Trial Examiner Ringer) You have been paid eight dollars and ninety cents for work that you have done since you ceased to be employed by the Electric Vacuum Cleaner Company; is that right?

A. Yes, sir.

Q. Now, you have earned some other money but haven't been paid yet; haven't you?

A. I got a part time job. The job pays any place from one dollar to two dollars a day.

Q. How much is owing to you at the present time for what you have done?

A. Right at the present time I couldn't tell you.

Q. Well, give us your best judgment.

A. I imagine I have got about twelve dollars coming.

Q. About twelve dollars coming for work already done?

A. I have been working since the day after Decoration Day off and on—Tuesday, I believe it was.

Trial Examiner Ringer: That is all.

384 Mr. Woodle: I have one question, please.

Cross-examination

Q. (By Mr. Woodle) Will you tell us whether or not you paid any dues to the C. I. O. since you have belonged?

A. Dues to the C. I. O.?

Q. Dues to the C. I. O?

A. No, sir.

Mr. Woodle: That is all.

(Discussion had off the record.)

Trial Examiner Ringer: We will take a short recess at this time.

(Short recess had.)

(Nicholas Kozma takes the stand.)

Trial Examiner Ringer: Were you sworn to tell the truth?

The Witness: No.

NICHOLAS KOZMA, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Lodish) Will you state your name and address, please?

A. Nicholas Kozma.

Q. Nicholas K-o-z-m-a?

A. K-o-z-m-a.

Q. Are you working now, Mr. Kozma?

385 A. No.

Q. Where did you work before?

A. Before I started Vacuum Cleaner?

Q. What was your last job?

A. I worked in the punch press, Machine Shop.

Q. At the Electric Vacuum Cleaner Company?

A. Yes; nine years.

Q. Nine years?

A. Yes.

Q. What was the last day you worked there?

A. It was March 18th.

Q. Was it on a Friday?

A. Thursday.

Q. Thursday was the last day you worked there?

A. Yes.

Q. Did you work on a night shift?

A. No.

Q. Day shift?

A. Yes.

Q. Have you earned any money or gotten any money by way of relief since that time?

A. No.

Q. How much were you making there?

A. Sixty-two cents an hour.

Q. Sixty-two cents an hour?

386 A. Yes.

Q. Forty-hour week?

A. Forty-hour week. Makes fourteen weeks over three hundred dollars.

Trial Examiner Ringer: Can you hear?

Mr. Woodle: No.

Mr. Lodish: He said he makes over three hundred dollars in fourteen weeks.

Trial Examiner Ringer: Will you try to raise your voice a little? It is awfully hard to hear back there. Try to speak right out so the men back there can hear what you are saying.

Q. (By Mr. Lodish) You say you worked there for nine years?

A. Nine years; yes.

Q. Did you belong to the MESA in 1934?

A. Yes.

Q. And until after the strike?

A. Well, I was member until January, 1936.

Q. Until January, 1936?

A. Yes.

Q. That is after the strike was over in 1935, you stayed with the MESA for the rest of the year?

A. Yes.

Q. Then did you drop out in January, 1936?

A. When I see nobody come around I drop out.

387 Q. Did you join the American Federation of Labor?

A. No.

Q. You didn't belong to them at all during 1936?

A. Not at all. Nobody asked me even.

Q. Nobody ever asked you?

A. No.

Q. How about 1937?

A. Nobody asked me either.

Q. You never joined the American Federation of Labor at all?

A. No.

Q. And nobody ever asked you since you have been working for the company?

A. Never asked me. They asked some other fellows but never asked me.

Q. Never asked you?

A. No.

Q. Did you say you were in the Machine Shop?

A. Punch press operator.

Q. Did you take part in that sit-down strike?

A. Yes.

Q. You sat in all night?

A. Yes.

Q. When did you leave Friday?

A. Around two o'clock in the afternoon.

Q. Then you were wrong when you told me the
388 last day was Thursday. You were there Friday too?

A. Well, I was not working.

Q. You were there Friday?

A. Yes.

Q. You left when everybody else left?

A. Yes.

Q. Did you hear Walter Scott say something?

A. Yes.

Q. Something about—what did he say?

A. Well, he say the Judge Corlett called up Paulus, they brought a statement. We come Monday morning to work, everything be O. K.

Q. You say "Judge Corlett"?

A. Yes.

Q. That is the Chief of Police?

A. Yes.

Q. And Paulus?

A Paulus had a statement in his hand. Chief of Police Corlett.

Q. Who had this statement in his hand?

A. Paulus.

Q. Paulus did?

A. Yes.

Q. Was Paulus standing there when Scott talked?

A. Yes.

389 Q. Then you all left?

A. Yes.

Q. Did you ever join the C. I. O.?

A. Yes.

Q. When?

A. March 17th, we had a meeting before we left the shop.

Q. That was the day before the sit-down strike?

A. The day before sit-down.

Q. Do you know what caused the sit-down strike?

A. Well, what caused. Just like the others trying to do.

Q. What?

A. Just like the other shops trying to do. We thought we might do better this way.

Mr. Orgill: I didn't get that.

Mr. Lodish: "Just like the other shops. We thought we might do better." Very general answer.

Q. (By Mr. Lodish) Now, did you get any information as to when the plant would close and open?

A. No, sir.

Q. When did you go back to the plant to try and get your job back?

A. It was April 5th, Monday morning.

Q. The day the plant opened?

A. Yes.

Q. What did you do?

390 A. I went there and see about three or four hundred from the Federation, so we can't get in.

Q. You couldn't get it?

A. No.

Q. Then what did you do?

A. We stick around for a while, then we go home, then some of them stick around longer. I don't know. I went home around nine o'clock.

Q. What did you do after that with reference to getting your job back; did you do anything else?

A. No.

Q. You mean after April 5th you went home and didn't see anybody any more?

A. I was there April 6.
Q. Was where?
A. By the shop.
Q. Yes?
A. And was the same thing. April 7th, too.
Q. What happened April 7th?
A. Same thing like first Monday.
Q. You couldn't get in?
A. Couldn't get in.
Q. What did you do after that?
A. After we had a meeting Thursday.
Q. Thursday?
391 A. Yes.
Q. April 8th?
A. Yes. They make agreement we going to go in on April 12th.
Q. Monday?
A. Monday. And when the Federation organizes we should sign a peace slip and everything O. K., but what's happened? When we came to work, gates was closed, a couple fellows stand over there. Send us downtown for tickets.
Q. That was Monday, April 12th?
A. Yes.
Q. You were told to go downtown for tickets?
A. Yes.
Q. Did you go downtown?
A. Yes, I went there.
Q. What happened downtown?
A. I got there eight-thirty and stayed until twelve-thirty; nobody showed up. Before they open up it was Saturday, April 3rd. I was down to Hall with my wife.
Q. Saturday, April 3rd?
A. Yes.
Q. That was before the plant opened?
A. Before they opened because it was in the paper nobody could get in unless they was member of Federation.
Q. You saw that in the paper?
A. Yes.
392 Q. And you went down with your wife?

A. Yes. And I get this gentleman Ledasil and he told me he couldn't do nothing because they got an active Local, and he told me I got to see Toth and they were not there and I went home.

Q. He was with the Pattern Makers?

A. Yes.

Q. And they weren't there, and you went home?

A. Yes.

Q. What happened April 12th after you went downtown?

A. We were waiting there and I didn't see Gordon and Toth either, so I went home twelve-thirty.

Q. And what did you do after that? What did you do next?

A. I didn't go there any more.

Q. You didn't go there any more?

A. No.

Q. Did you go to the plant any more?

A. No.

Q. You just dropped it then?

A. Can't get the fellows to give me a card. What am I going to do?

Q. You say April 5th you saw a lot of American Federation of Labor men out in front of the plant; how did you know they were American Federation of Labor men?

A. They wear the buttons.

393 Q. Buttons?

A. Yes.

Mr. Lodish: That is all.

Trial Examiner Ringer: Any questions?

Direct Examination

Q. (By Mr. Carey) When you joined the C. I. O. did you sign the application card?

A. Yes, sir.

Q. Would you recognize that application card now?

A. Yes.

Q. Is that the type of application card you signed? (Mr. Carey is exhibiting a card to the witness.)

A. Yes, sir.

Q. Do you remember the statement on your application card that read: "The undersigned hereby authorizes and requests the United Electrical and Radio Workers of America, Affiliated with the C. I. O., National Office, 1133 Broadway, New York City, through its officers, to represent me for the purpose of collective bargaining in regards to wages, hours and working conditions for a period of one year."

A. Yes.

Q. Do you recall that being on your card?

A. Yes.

Q. What do you recall that to mean?

A. Just like the others.

394 Mr. Spieth: Objection.

Trial Examiner Ringer: I will sustain the objection on that. It is expressly worded there. I don't believe it would make any difference what he thought those words meant.

Q. (By Mr. Carey) What do you understand that statement to mean?

Trial Examiner Ringer: I am sustaining the objection, Mr. Carey.

Mr. Carey: I am sorry. That is all. If there is no objection, I would like to incorporate one of those cards in the record.

Trial Examiner Ringer: Do you want to introduce that?

Mr. Lodish: Yes; we may as well have it in there. Mark this as Board's Exhibit 20.

(Board's Exhibit 20 so marked for identification.)

Mr. Lodish: I now offer Board's Exhibit Number 20 in evidence.

Mr. Spieth: I object. If they have a card that this man signed, that is the card that ought to be produced.

Mr. Woodle: We join in that objection. I don't know the purpose of that, or if they are going to introduce others. If they are not, it serves no purpose. If they are, it still serves no purpose.

Mr. Carey: Previous testimony on cross-examina-

395 tion when the counsel made it appear that it was necessary that they pay dues in the organization. I wish to offer that as testimony to show that that is sufficient according to the law to have the Radio Workers represent the workers in collective bargaining, and that was the intent of the card.

Mr. Orgill: May I ask what law you are now interpreting?

Trial Examiner Ringer: He means rules and regulations of the Union, I suppose.

Mr. Orgill: I can only get what he means by what he says.

Mr. Carey: It is the law that gives the workers the right of collective bargaining through representatives of their own choosing.

Mr. Orgill: I would like to know what law he has in mind.

Mr. Woodle: We still feel the exhibit serves no purpose.

Trial Examiner Ringer: He has testified that that is the form which he signed. I will overrule the objection. Admitted.

(The card referred to was received in evidence and marked "Board's Exhibit No. 20.")

Mr. Spieth: No cross-examination.

Cross-examination

Q. (By Mr. Woodle) Did you pay any dues to the C. I. O.?

A. Not yet. I am not working. How could I pay it?

Q. You testified you were an employee of the MESA?

396 A. Yes.

Q. You paid dues to that organization; didn't you?

A. Yes.

Q. When you stated that you continued a member of the MESA until January, 1936, by that you meant that you continued to pay dues until January of 1936—is that what

you meant?

A. Yes.

Mr. Woodle: That is all.

Trial Examiner Ringer: Next witness.

Harold August Keehl takes the stand.)

Trial Examiner Ringer: Were you sworn?

The Witness: No.

HAROLD AUGUSTUS KEEHL, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Lodish) Will you state your full name and address, please?

A. Harold August Keehl.

Q. Keehl?

A. K-e-e-h-l.

Q. And your address, please?

A. 11118 Woodland Avenue.

Q. Are you working now, Mr. Keehl?

397 A. Well, I have been working a little at odd jobs.

Q. How much money have you made since March 19th?

A. Approximately ninety dollars.

Q. From all sources of income?

A. Yes. That is, do you mean relief too?

Q. Yes.

A. Yes; that would include relief.

Q. Do you have any money coming to you that you have worked for but haven't been paid yet since March 19th?

A. No.

Q. Now, did you work for the Electric Vacuum Cleaner Company?

A. Yes.

Q. When was the last day you worked there?

A. You mean before the trouble?

Q. No. When was the last day that you worked there?

A. May 10th.

Q. Oh, I see. You have worked there since the trouble?

A. Yes.

Q. Now, I will get to that later. How much were you making at the Electric Vacuum Cleaner Company?

A. Fifty-eight cents an hour.

Q. Forty hour week?

A. Yes.

Q. How long had you worked there altogether?

A. Well, three and a half years, going on four years.

398 Q. What was your job there?

A. Inspector.

Q. You mean you inspected work of other people?

A. Yes.

Q. About how many people's work did you have to inspect during the course of a few months?

A. That would be hard to tell.

Q. Well, would it be ten or twenty or much more?

A. It would maybe run over that.

Q. Have you any idea of about how many different people?

A. I would say approximately twenty or twenty five.

Q. What shift did you work on?

A. The day shift.

Q. How many people were working in the department of which you were an inspector?

A. I believe there were about ninety eight or a hundred. That is, excluding the inspectors.

Q. About how many inspectors?

A. I believe there were sixteen.

Q. I see. So that you were one of sixteen, inspecting about a hundred people—that is why you think there was about twenty or so?

A. Not just on that floor. It came up from the lower floor that we had to inspect the work. And it was passed on to these people.

399 Q. Did you ever belong to the MESA?

A. Yes, sir.

Q. Did you continue belonging to the MESA after t strike was over, or didn't you?

A. Yes. I was in good standing after the strike 1935.

Q. How long did you remain in good standing?

A. I think about three or four months.

Q. And then you let it drop?

A. Let it drop.

Q. Did you join the American Federation of Labor?

A. Yes.

Q. When was the first time you joined that?

A. That was in about 1936.

Q. And do you remember how you happened to join the American Federation of Labor then?

A. Well, one of the organizers was coming through the department and he come up to me—I happened to be the last man in the department that signed—he asked me if I wanted to join and I said: "I don't think I do." He said: "Well, you better think it over." He said: "You know what happened to a few others that didn't sign up in the department," and he says: "I will be back in maybe two or so hours," and he says: "You will have enough time to think it over," so when he came back, rather than lose my job, which I presumed I would, I signed up.

400 Q. And when you signed up, that made the department complete then?

A. Yes.

Q. To your knowledge?

A. Yes.

Q. Did he say anything about a closed shop to you?

A. I asked him about a closed shop and he says—he didn't say anything about a closed shop. He said: "Everybody else is signing," and that I should sign.

Q. Then did you remain a member of the American Federation of Labor from then on?

A. Well, I remained a member. I didn't pay any dues for six months, and finally they sent for me down to the office and I was called down to the office and seen Mr. Waterbury and Mr. Waterbury asked me why I didn't pay

and I told him I was kind of short and he says: "Well—" I says: "Do you have to belong to the Union as long as it is not a closed shop; do I really have to belong?" He says: "Well, I don't want to discuss that," but he says, "We have an agreement and the only thing I can tell you, the best thing to do is pay your dues."

Q. And that was, you say, six months or so after April?

A. That was after April, yes. That was about October.

Q. About October, 1936?

A. Yes.

401 Q. And did you then pay dues?

A. Well, then I didn't have the money right at present and they wanted the whole six dollars, and I couldn't give it to them, so then Mr. Waterbury and the shop steward arranged so I could pay him two dollars a payday every payday.

Q. Did you do that?

A. Well, then I paid them up—I think it was six dollars up until December—just before this trouble.

Q. And you paid up through December, 1936; is that what you think?

A. Well, I was still back, but I paid them six dollars on my back dues and that still left me in arrears.

Q. How about 1937? Did you pay any dues during 1937?

A. No.

Q. Then as far as you are concerned, you still owed them money; you have not been quite up to date in your dues?

A. I still owe them money; yes.

Q. Did you have occasion to join any other labor organization?

A. Yes, I did.

Q. What was that? and when?

A. That was the United Radio and Electrical Workers or United Electrical and Radio Workers.

Q. When did you join that?

A. That was in—March 17th, I believe it was.

402 Q. The day before the sit-down strike?

A. Yes.

Q. Did you join it in the plant or at a meeting or what?

A. At a meeting.

Q. Outside of the plant?

A. Outside of the plant.

Q. Now, did you know about the sit-down strike on Thursday, March 18th?

A. Yes, I did.

Q. How did you know about it; did you see it?

A. Yes; I happened to be down on the first floor a little after it started in connection with the work I do.

Q. Yes?

A. And that is how I know.

Q. And you saw them sitting down or stopping work?

A. Well, the work was all stopped.

Q. About what time was that when you saw it?

A. Well, that was a little after three.

Q. Thursday afternoon?

A. Thursday afternoon.

Q. Then what did you do? Did you go back to your department?

A. Yes; I went up to my department and then told a few of the other fellows in our department there was a sit-down strike. Of course, naturally they were in
403 sympathy with the ones on the first floor and they dropped their tools.

Q. In other words, your department stopped work too?

A. Not altogether, no, but there was a scattering all around the department that dropped their tools, maybe twenty-five or thirty.

Q. About twenty-five or thirty-quit working?

A. Yes.

Q. And the rest continued?

A. They continued, yes.

Q. And that was until about four o'clock; was it?

A. That was about three-thirty.

Q. That is when your shift ends?

A. Four o'clock it ends.

Q. I see. Some people stopped working at three-thirty?

A. Yes.

Q. But you all stopped at four because you left?
A. Yes.
Q. Did you go back Friday morning?
A. Yes, I did.
Q. Did you work then?
A. No, I didn't.
Q. Did any other people in your department work?
A. Well, yes, there was a few of them that worked.
Q. About what proportion this time of the one hundred?

A. Well, that would be hard to say; I don't know.
404 All I know is there was a few that was working.

Q. Was there a time during that morning that everybody stopped working?
A. Yes.
Q. About what time was that?
A. That was about ten forty-five or eleven o'clock.
Q. What was the occasion of everybody stopping work; what happened?
A. Well, Mr. Koeppe—
Q. Mr. who?
A. Mr. Koeppe, the foreman of that floor, in that department, came around and told all the employees that there would be a general meeting at one o'clock—that was on a Saturday morning—that everybody could go home.
Q. That is, he told the employees there would be a general meeting the next day?
A. Yes.
Q. At one o'clock, where?
A. The Old Cleveland Postoffice.
Q. Did you leave then?
A. No, I didn't.
Q. You stayed there?
A. Yes.
Q. What did you do or hear thereafter in the plant?

A. Well, we all stayed in the plant until some
405 sort of agreement was reached between the company officials and I think it was the American Federation of Labor and the C. I. O.

Q. Do I understand then, when Mr. Koepke—is that it,

Koepke?

A. I don't know really how to spell it.

Mr. Wilson: Koeppe.

Mr. Lodish: How do you spell it?

Mr. Wilson: K-o-e-p-p-e.

Q. (By Mr. Lodish) Do I understand you to say then that when Mr. Koeppe told the employees to go home that nobody left?

A. Yes. There was some left.

Q. About how many left, and how many stayed? Have you any idea?

A. I don't really know how many left; all I know is that there was a lot of them that stayed.

Q. You couldn't say whether it was half and half or anything like that?

A. No, I couldn't.

Q. Did you hear the Chief of Police Corlett say something later?

A. Yes; in regard to some agreement. It was either him or Mr. Scott.

Q. What did you hear said in substance?

A. Well, there was an agreement reached whereby we would come back to work on March 22nd.

Q. Yes?

406 A. That there would be no discrimination and all the men—that they could belong to any union they wanted.

Q. You heard somebody say that?

A. Yes.

Q. Which one was it; do you remember?

A. I believe it was Mr. Scott that was reading the agreement at that time.

Q. Who was next to him when you read that agreement?

A. Mr. Corlett.

Q. Anybody else?

A. That is all I seen. They were up on the table.

Q. That is, Chief of Police Corlett and Mr. Scott were on the table?

A. Yes.

Q. Now, did you then have a meeting that Friday, C. I. O. meeting?

A. Yes; at four o'clock in the afternoon.

Q. That was in the Postoffice Building?

A. That Old Postoffice.

Q. And you elected officers?

A. Yes.

Q. Did you try to go back to work March 22nd?

A. Yes; I went back to the plant and of course, nobody could go in; there was a notice posted up there that it would be closed until further notice.

407 Q. Did you know before you went to the plant on March 22nd that it would be closed?

A. I didn't really know. I seen a piece in the paper in regard to it.

Q. Did you thereafter see a piece in the paper about the plant opening up April 5th?

A. Yes.

Q. What did you do after that about getting back to work?

A. Well, I went down April 5th, but of course we couldn't get in.

Q. Then what did you do?

A. Well, I went down to Headquarters.

Q. That is, April 5th you went to the plant, and when you couldn't get in, you went to the Metal Trades Hall?

A. No; not the Metal Trades.

Q. Oh, you went to your own Headquarters?

A. Yes.

Q. Then what did you do?

A. Then I believe we tried to make contact with the company and other parties in regard to opening up the plant, that we were all willing to go back to work.

Q. Who did that; do you know—who tried to make those contacts?

A. Mr. Pascoe, and I believe Mr. Hoff.

Q. Ray Hoff?

408 A. Yes.

Q. Were you there?

A. Well, I was at the Headquarters.

Q. And was this being done by telephone?

A. Yes.

Q. Did you hear any of the conversations?

A. No, I didn't.

Q. You just knew generally that they were making certain attempts?

A. Yes.

Mr. Spieth: I move that that go out.

Trial Examiner Ringer: Overruled.

Q. (By Mr. Lodish) What did you do after that with reference to getting your job back?

A. Well, then when the plant reopened—of course, I was not there on Monday morning. I don't believe I was, but I went back, I think it was a Wednesday morning, and after the plant reopened.

Q. That was April 7th? Monday was April 5th.

A. No; the following week—April 12th.

Q. April 12th?

A. And in between that time I think the two sides had a meeting—the American Federation of Labor and the United Electrical and Radio Workers and they agreed that we would go back on Thursday, April 8th.

409 Q. You mean a meeting at the Hollenden Hotel?

A. I believe it was.

Q. You were not there?

A. No, I was not there.

Q. At any rate, what did you do?

A. Because of that meeting or because of certain instructions we got, we had a meeting in the Old Postoffice after that meeting and was told we were going back to work Monday morning.

Q. April 12th?

A. Yes.

Q. When was the meeting in the Old Postoffice?

A. That was on Thursday, April 8th.

Q. All right. And then did you go back April 12?

A. No; I didn't go back April 12.

Q. When did you go back?

A. On the following Wednesday.

A. April 14?

A. Yes.

Q. What happened then?

A. Well, I went in to bring out my card and my card was not in the rack.

Q. Did you have an American Federation of Labor clearance card?

A. Yes.

Q. When did you get that?

410 A. April 9th.

Q. Where did you get that?

A. Metal Trades Hall.

Q. And April 14th, you found your card missing?

A. Yes, sir.

Q. Then what did you do?

A. I went up to my boss and asked him why my card was not in the rack, and he said: "Well, I don't think you can start work."

Q. Who was your boss?

A. Mr. Hrach—Joe Hrach.

Q. Hrach?

A. Yes.

Q. Go ahead.

A. He said: "I don't think you can start work. They ordered all the cards out of the rack. The only way you can get back in is to go back to the Metal Trades Hall and see Mr. Ledasil and see what he has to say."

Q. Then what did you do?

A. Well, I didn't go down that day, but I think I made an attempt about Thursday and Mrs. Ledasil was not in.

Q. When did you make the attempt?

A. Thursday.

Q. Thursday?

A. Yes.

411 Q. The following day?

A. Yes.

Q. That is, the 15th?

A. Yes.

Q. Then what did you do?

A. Then I didn't go back any more; I just—I didn't go down to the Metal Trades and finally my brother-in-law

told me, he said that I should come in to work. That wa on April 26.

Q. Yes. And did you go back to work then?

A. Yes.

Q. That is, you went back to work April 26?

A. Yes.

Q. Did you get your old job back again, the same worl you had?

A. Well, I got my old job back, yes.

Q. How long did you work then?

A. Then I worked eleven days. That was up including May 10th which was Monday.

Q. Then what happened, May 10th?

A. Then I was called downstairs by my boss and he says: "Well, I don't think you will be able to work." I says: "Why?" He says: "Well," he says: "I have a notice here that you should go down to the Metal Trades and straighten up your dues." I says: "I thought
412 we were supposed to have time to straighten up our dues." He said: "I don't know nothing about that, but," he says: "you go down and see Mr. Ledasil." That was on Friday, near four o'clock. So I dashed down to see Mr. Ledasil and I asked Mr. Ledasil about it an he said well, he had orders that any body who had not paid up their dues to date was to be taken off their job, so I says: "Well, I didn't have the money." I only drew a four-day pay and naturally I couldn't afford to pay out seven dollars of a four-day pay after a few dollars that I needed for home expenses, and everything, I didn't have enough. As it was, I couldn't afford to pay seven dollars, so I asked Mr. Ledasil if he couldn't take it out of my next pay. He says: "No. Orders is orders. You will have to pay the whole seven dollars. The only thing I can tell you to do, or that you can do, is I will leave you know when the executive board meets and you can come down and plead your case to them. Then I will drop you a card."

Q. Then what happened?

A. Well, I have been waiting for a card up to today, and I have never received one.

Q. That was the last conversation you had?

A. Yes.

Q. You said you worked there for three and a half years?

A. Yes.

Mr. Lodish: That is all.

Direct Examination

413 Q. (By Mr. Carey) Have you joined the C. I. O. Union?

A. Yes.

Q. The United Electrical and Radio Workers of America?

A. Yes.

Q. Did you sign a card when you joined?

A. Yes.

Q. Do you recall that the card authorized the United Electrical and Radio Workers of America to represent you in collective bargaining?

A. Yes, it did.

Mr. Spieth: I object, your Honor. I think the card should be produced, if he has a card that he signed. This is just a blank card. We should have a card that he signed. That is the best evidence.

Trial Examiner Ringer: Read the last question and answer.

(Last question and answer read by the Reporter.)

Trial Examiner Ringer: Are you objecting to that after it has been answered?

Mr. Spieth: Yes. I think if there is a signed card showing his application to join, that is the best evidence.

Trial Examiner Ringer: Was the card you signed similar to that, containing the same provisions?

The Witness: Yes, the same thing.

Trial Examiner Ringer: The same thing?

414 The Witness: Yes.

Trial Examiner Ringer: Objection overruled.

Mr. Lodish: May the record show that the witness was examining Board's Exhibit Number 20.

Mr. Orgill: May we ask the other side if they will produce those cards?

Trial Examiner Ringer: Certainly you may.

Mr. Carey: What is the purpose of introducing car

Mr. Lodish: I don't think there is any necessity cross talk. This is the "C" case. The "R" case is co ing next. If they want to produce the cards, they can. they don't want to, they will have to take the consequenc of not producing them. Nobody can compel them to intr duce those cards, but if they want certain evidence to g in, they will have to.

Trial Examiner Ringer: All I meant by my stateme is that if the counsel for the Cleveland Federation of Labo wanted to ask counsel for any group whether or not the would produce them, that is perfectly all right.

(Discussion had off the record.)

Trial Examiner Ringer: Now, you are formally re questing that they produce those cards?

Mr. Orgill: Yes.

Trial Examiner Ringer: Is there any comment by the representatives of the Board?

415 Mr. Carey: We will consider the request.

Trial Examiner Ringer: And give your decision in the morning?

Mr. Carey: Yes; or at some future time during the hearing.

Mr. Orgill: What do you mean by "some future time"?

Mr. Lodish: "During the hearing" he said.

Mr. Wachtel: I would like to object to the exhibit and his testimony on the exhibit for the reason that his testimony shows that he signed one of the applications, and the best evidence is that application.

Trial Examiner Ringer: That will be overruled. The next witness.

Mr. Carey: Mr. Examiner, may I have some further questions?

Trial Examiner Ringer: You may.

Q. (By Mr. Carey) You testified you paid dues into the American Federation of Labor?

A. Yes.

Q. Did you receive a dues book in that organization?

A. Yes, I did. About a month after I paid my initia-

tion fee.

Q. At the time you paid the initiation fee did you receive a receipt for the initiation?

A. Well, I had an initiation stamp in it.

Q. That was placed in the book?

416 A. Yes.

Mr. Carey: That is all.

Cross-examination

Q. (By Mr. Woodle) Did you pay any dues to the C. I. O.?

A. I paid my fee.

Q. To the C. I. O.?

A. Yes.

Q. What was the amount of that?

A. Two dollars.

Q. You paid no dues since that time?

A. No, I haven't.

Mr. Woodle: That is all.

Trial Examiner Ringer: Next witness.

Mr. Lodish: I want to put Mr. Pascoe on for a more or less formal reason. Something that came up before.

JAMES PASCOE, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Lodish) Will you state your name, please?

A. James Pascoe.

Q. Your address?

A. 1002 East 129th Street.

Q. And your affiliations, office?

A. Representative of the United Electrical and

417 Radio Workers of America.

Q. Now, Mr. Pascoe, the Board's causes alleges that the United Electrical and Radio Workers of America, Local Number 720 is a labor organization. The Act defines that as "Any organization of any kind or any agency or

employee representation committee or plan in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers, concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." I ask you, as a representative of the United Electrical and Radio Workers of America whether that organization exists, in part at least, for the purpose of negotiating and collective bargaining?

Mr. Spieth: I object.

Trial Examiner Ringer: What is the ground of your objection?

Mr. Spieth: He asked whether that organization exists in part for that purpose or any other. We have not had any evidence as yet that such an organization exists at all. As I understand it, there was a charter introduced showing when and if such an organization started. That, it seems to me, is the way to prove it. Not by the testimony of some witness.

Trial Examiner Ringer: I think your point would be perfectly well taken in a legal proceeding in court.

418 But it will be overruled here.

Mr. Orgill: I have another reason for the objection.

Trial Examiner Ringer: I will withdraw my ruling until I have heard the other counsel.

Mr. Orgill: I asks for a conclusion of the witness, his opinion. That is the thing your Honor is going to determine from all the facts.

Mr. Lodish: I will withdraw that. Mark this Board's Exhibit No. 21 for identification.

(Board's Exhibit No. 21 so marked for identification.)

Mr. Lodish: Mark this Board's Exhibit Number 22 for identification.

(Board's Exhibit No. 22 so marked for identification.)

Q. (By Mr. Lodish) I understood you to say, Mr. Pascoe, that you are an organizer for the United Electrical

and Radio Workers of America?

A. That is right.

Q. And do you as such draw a salary?

A. I do.

Q. So that they are sufficiently in existence to have a treasury; is that a fact?

Mr. Spieth: I object, your Honor.

Mr. Lodish: I withdraw the question.

Q. (By Mr. Lodish) I will hand you what has
419 been marked for identification as Board's Exhibit No. 21 and ask you if you have ever seen that before?

A. That is—

Mr. Spieth: Object. He has asked you just whether you have seen it.

A. I have.

Q. (By Mr. Lodish) Do you in connection with your work have occasion to use that document?

A. I do.

Q. What is that document with reference to your work?

Mr. Orgill: Objection.

Trial Examiner Ringer: Overruled.

Q. (By Mr. Lodish) How does it affect your work?

Mr. Spieth: Objection.

Trial Examiner Ringer: Overruled.

A. The rules and regulations contained in the book are rigidly adhered to by every member of the organization.

Mr. Orgill: I ask that the answer be stricken out as not responsive.

Trial Examiner Ringer: Let it go out.

Q. (By Mr. Lodish) Does the organization of which you are an organizer have a constitution and by-laws?

A. They do.

Q. And do you have a copy of the constitution and by-laws with you?

420 A. Well, not in my pocket. I do at all times during organization work.

Q. Is Board's Exhibit No. 21 a copy of that constitution and by-laws?

Mr. Spieth: I object, your Honor. If that is to show

the existence of this organization. It is not competent t show the organization.

Trial Examiner Ringer: Well, it may not completel but it may shed some light on it. I will overrule the obje tion.

Q. (By Mr. Lodish) What is your answer?

A. It is.

Q. And this is the constitution and by-laws of th larger parent organization?

A. The International Organization, yes, sir.

Q. Now, does the International Organization arrang for branches or Chapters or Locals?

A. Our constitution provides that any fifteen payin initiation fee—

Mr. Spieth: I object, your Honor. The constitutio will show for itself.

Mr. Lodish: That question was a yes or no questio Will you please read it, Mr. Reporter?

(Last question read by the Reporter.)

A. Yes.

Mr. Spieth: Same objection.

421 Trial Examiner Ringer: Overruled.

Q. (By Mr. Lodish) Do you in your capacity a an organizer have anything to do with the formation o Locals or organization of Locals?

A. I assist, of course, in the formation of Locals.

Q. Do you have any instructions, written or otherwise to advise you how to go about the business of organizin Locals for the United Electrical and Radio Workers o America?

A. Yes, sir. The Constitution and By-Laws of th organization.

Q. I hand you what has been marked for the purpos of identification Board's Exhibit No. 22 and ask you wha connection that has with your work?

A. Each Local that is set up is provided with a bookle giving them a sample Constitution and By-Laws to eithe adopt or to prepare and change sufficiently to fit their ow particular use, and to use as a Constitution and By-Law of their organization. However, the content of that book i

not mandatory upon the Local.

Q. And is Board's Exhibit No. 22 one such sample Constitution and order of business for Locals of the United Electrical and Radio Workers of America?

A. It is.

Q. Now, Mr. Pascoe, in connection with your work, did you have occasion to help, assist the organization of
422 the employees of the Electric Vacuum Cleaner Company?

A. Yes.

Q. And was there or was there not ever formed a Local for employees of the Electric Vacuum Cleaner Company?

Mr. Spieth: I still make the same objection that I have been making, trying to prove the organization in this manner.

Mr. Lodish: This is all preliminary.

Trial Examiner Ringer: Overruled. That is just preliminary, I think.

Mr. Orgill: It is not preliminary. He asked for the opinion.

Mr. Woodle: If it is merely preliminary, some of these objections may be dispensed with, but we would like to know the reason for proceeding in this manner. If the organization can be proved in the proper way, some of these questions are superfluous. If it cannot be proved in the proper way, let us know the reason for asking these questions.

Mr. Lodish: Isn't it perfectly obvious that the question: "Did you have anything to do with the organization of the employees of the Electric Vacuum Cleaner Company" was necessarily a preliminary question?

Trial Examiner Ringer: I think so. Overruled.

Q. (By Mr. Lodish) What was your answer?

A. Yes.

Q. Did you get to the stage—I will withdraw that.
423 Did you sign a charter with the National Labor Relations Board on behalf of the United Electrical and Radio Workers of America Local 720?

A. I did.

Q. Where did you get Local No. 720?

Mr. Spieth: That is not an any more competent way of proving the existence of the company. A self-serving declaration that may appear in that complaint. You state that he had some connection with Local No. 720.

Trial Examiner Ringer: I think that objection is well taken, Mr. Lodish, the objection to that particular question.

Mr. Lodish: All right.

Q. (By Mr. Lodish) Was a charter ever issued by the United Electrical and Radio Workers for the employees of the Electric Vacuum Cleaner Company?

A. There was.

Q. And is that charter in existence?

A. It is.

Q. Where is it?

A. In the district office.

Q. How large is it physically? Is it a framed instrument?

A. I imagine it is about fourteen by sixteen.

Q. Inches?

A. Inches.

Q. Something like this (indicating)?

424 A. Perhaps a little larger than that.

Q. Can we have that to read into the record, Mr. Pascoe?

A. At such time as the Board requests it; yes, sir.

Trial Examiner Ringer: I think it would save a great deal of time to request it, Mr. Lodish.

Q. (By Mr. Lodish) Will you bring the charter with you tomorrow morning?

A. I will have the charter here in the morning.

Mr. Lodish: All right.

Trial Examiner Ringer: Proceed. Any additional examination or cross-examination by other counsel?

Direct Examination

Q. (By Mr. Carey) As representing a local organization, did you have negotiations with the management or in any way try to contact them?

A. It was impossible to contact the management of the plant.

Mr. Orgill: I ask that the answer go out as not being responsiye.

Trial Examiner Ringer: Read the question on that, please.

Mr. Orgill: The question can be answered yes or no. Read the question.

(Last question read by the Reporter.)

Trial Examiner Ringer. That is nearly enough-responsive for all practical purposes. It means he didn't
425 Proceed. Overruled.

Mr. Carey: What was your ruling?

Trial Examiner Ringer: I overrule the objection and the answer to your question stands in the record.

Q. (By Mr. Carey) Did you make any other effort through other representatives to contact the management for the purpose of collective bargaining?

A. Yes; I called upon counsel; attorney for the corporation, and had a conference with him in his office.

Q. What date was that conference and where?

A. As nearly as I remember, the 23rd or 24th of March.

Q. Did he question the existence of the Local Union or the activities of the United Electrical and Radio Workers of America?

Trial Examiner Ringer: May I interject here. Are the two gentlemen who just came in witnesses?

Mr. Pascoe: They are.

Trial Examiner Ringer: Under the rules here, you have to stay out in the hall until you are called, because the witnesses are required to be separated from the trial. I beg your pardon for breaking in on that, but I thought possibly they were the ones we had in mind. Now if you will read the question as far as you have gotten.

(Last question read by the Reporter.)

Mr. Orgill: Objection.

426 Trial Examiner Ringer: Sustained. I don't believe what he would say would have any weight on this as evidence.

(Discussion off record.)

Mr. Carey: No further questions.

Trial Examiner Ringer: Anything by the Respondent or other counsel?

(No response.)

Trial Examiner Ringer: Next witness.

(Discussion off record.)

(Mr. Clyde H. Boyes takes the stand.)

Trial Examiner Ringer: Have you been sworn?

Mr. Boyes: No.

(Witness sworn by Trial Examiner Ringer.)

CLYDE H. BOYES, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Lodish) Will you state your name and address, please?

A. Clyde H. Boyes, 13509 Shaw Avenue.

Q. Are you employed at the Electric Vacuum Cleaner Company?

A. Yes, sir.

Q. How long have you worked there?

A. Twelve years.

427 Q. Twelve years?

A. Yes, sir.

Q. What is your position there?

A. Assistant foreman. Sub-foreman over the automatics.

Q. Sub-foreman?

A. Yes, sub-foreman.

Q. In the Automatic Department?

A. Yes.

Q. What is your pay there?

A. A dollar and five.

Q. A dollar and five cents an hour?

A. Yes.

Q. Forty-hour week?

A. Forty-hour week.

Q. Did you have occasion to be out of employment after the plant was closed?

A. Yes.

Q. How long were you out of employment?

A. Three weeks.

Q. When did you go back to work?

A. I think it was—

Mr. Spieth: Now, if your Honor please, I don't understand that this gentleman is one of the parties who are named in this petition as having been out of work.

Mr. Lodish: He is not one of the twenty-six, no.

428 Mr. Spieth: Then I don't see the purpose in the examination as to what he earned or how long he had worked or anything of that kind. I move that it go out.

Mr. Lodish: It may be material.

Trial Examiner Ringer: I don't know just what he has in mind. Of course, there are allegations in this complaint with reference to certain ones being off for a period of time there and then some of them taken back, and I suppose this is one of those men.

Mr. Lodish: The complaint, in Paragraph Ten, says that there was a refusal to reinstate about five hundred and fifty employees and that thereafter the respondent did employ certain persons in certain departments and then finally twenty-six were left out.

Trial Examiner Ringer: Overruled.

Q. (By Mr. Lodish) Did you answer the question of when you got back to work, Mr. Boyes?

A. I think it was April 9.

Q. April 9th?

A. It was on a Saturday.

Q. Now, did you belong to the MESA at one time?

A. I did, yes.

Q. That was in 1934 up until the strike of 1935?

A. It was, yes.

Q. Did you join the American Federation of

429 Labor after the strike of 1935?

A. Yes.

Q. You did?

A. Yes.

Q. When was that?

A. That was when we come back to work. I think it was the last—either the last week in June of 1935 or the second last week.

Q. At least, it was when the strike was over?

A. Yes.

Q. And you came back to work and you joined the American Federation of Labor?

A. Yes.

Q. Did you pay anything at that time?

A. They took the initiation fee out of the pay and that is all I ever paid.

Q. That is, your payment was made through your wages at that time?

A. Yes.

Q. And you have never paid anything since?

A. No.

Q. Not at all?

A. No.

Q. Were you ever approached after that regarding your membership in the American Federation of
430 Labor, say up until—during the rest of 1935, did anybody talk to you?

A. No.

Q. How about the year 1936?

A. No.

Q. So I take it from your testimony that during the entire year 1936 you paid nothing and were never asked about it?

A. Was never asked, no.

Q. Were you approached regarding your membership the week or two before the plant closed, March 19th, the first part of March?

A. Yes.

Q. Who approached you and what was said?

A. Well, the foreman sent us up in the office.

Q. The foreman sent you up to the office?

A. Yes; with the rest of them in the department.

Q. How many were there of you sent up to the office?

A. There was seven including me, seven.
Q. Seven altogether?
A. Yes. In the automatics, yes.
Q. That is the Automatic Department?
A. Yes.
Q. Who were the seven?
A. You mean the names?
Q. Yes.
A. There was Patrick Barrett.
431 Q. And who else?
A. Ed Cauley.
Q. Yes?
A. Jim Cronie and Andy Hegedus.
Q. Yes?
A. And Ross Green.
Q. Yes?
A. And Louis Young.
Q. That is six, and yourself is seven?
A. And myself is seven.
Q. What time was that?
A. I think that was on a Wednesday before the 19th.
Q. The Wednesday before the 19th was March 17th?
A. I think that is when it was.
Q. What time of the day was it?
A. It was in the morning; must have been around ten o'clock.
Q. Around ten o'clock Wednesday morning seven of you were called in the office?
A. Yes.
Q. Who was in the office?
A. Paulus was in the office.
Q. Yes?
A. And McSweeney.
Q. Who?
A. McSweeney.
432 Q. You mean McWeeney?
A. No. McKinnon.
Q. Yes?
A. And Toth.
Q. Who else?

A. And four or five others. I don't know.

Q. You mean whose names you didn't know?

A. Yes.

Q. Will you tell us as near as you can what the conversation was at that time?

A. One of the men sitting down opposite Paulus.

Q. Who was that?

A. Ed Cauley.

Q. Ed Cauley sat down opposite Paulus?

A. Yes.

Q. All right.

A. And put an American Federation of Labor card in front of him and told him to sign there.

Q. Who put an American Federation of Labor card in front of him?

A. I think Toth.

Q. That is, put the card in front of Cauley?

A. Yes.

Q. All right. Then what?

A. And he asked him to sign.

433 Q. Who asked him to sign?

A. Toth. And he said he would have to think it over, and Toth said he had plenty of time to think it over. Then there was argument about if we should pay that five dollars over again that we paid two years ago, and then Mr. Tutour happened to come past at that time.

Q. Is that the President of the company?

A. President of the company. He come in and wanted to know what the argument was, and we told him.

So he told McKinnon: "These are my boys; treat them right and take care of them."

Q. Anything else? Any more conversation? Did Paulus say anything?

A. Paulus was talking to Louis Young most of the time. Had more argument.

Q. Can you speak a little louder, please, Mr. Boyes?

Trial Examiner Ringer: If any of you are not getting it at any time, just hold up your hand here and we will call the witness' attention to it and he will just have to talk louder. You are doing pretty well most of the time, though,

compared to a lot of them.

Q. (By Mr. Lodish) Did any of these seven people sign cards at that time?

A. No, sir.

Q. Is that about all you can remember of the conversation?

434 A. That is all.

Q. I asked you if Paulus said anything and you said he was talking to Louis Young. Could you hear what he said?

A. Something about Louis said that he didn't prefer any union at first. Then Paulus said he was trying to sell him the idea, trying to get him to sign up with the American Federation of Labor.

Q. What did he say?

A. I didn't catch all of the conversation.

Q. All right. Now then, you went back to work?

A. Went back to work.

Q. This was about ten o'clock in the morning or so?

A. Yes.

Q. Did anything else happen that day? What happened next?

A. We were called up right around about two o'clock in the afternoon.

Q. Called up to—

A. Up to Paulus' office.

Q. Same office?

A. Same office.

Q. The same seven people?

A. Just Waterbury and Paulus.

Q. Just Waterbury and Paulus?

A. Waterbury and Paulus.

Q. How about your group? Was it the same seven?

435 A. All but Louis Young and Andy Hegedus.

Q. There were five of you this time?

A. Yes, five of us.

Q. What was the conversation at this time?

A. They called us up and told us.

Q. Try to remember who did the talking, who said what?

A. Well, Mr. Paulus said that he figured we were in telligent men and we wanted to run the automatics, and that we could use our influence downstairs to influence the fellows downstairs to influence the fellows down there and Waterbury said they wanted an answer soon because they were going to come back in the afternoon, but they didn't show up, so we told them we would have to see what the night men said about going into a group. We didn't have much time, so we went on down. We told the night men and they said they would think it over and leave a note for us in the morning.

Q. Right now I would like to have all the conversation that you remember. I would like to have whatever anybody said, if you can remember.

A. In the office?

Q. Yes. I would like to know what Paulus said specifically.

A. Waterbury, they threatened to pull the third floor out if we didn't sign up, and it looked bad.

Q. What was said by any of you?

A. Jim Cronie said: "Does that mean we will
436 all be out on the street whether we sign or not, or if we don't sign, we will be out on the street?" And he said practically the same thing, we would all be out on the street.

Q. Who said that?

A. Waterbury.

Q. Waterbury said, "We will all be out on the street"?

A. Yes.

Q. That is Wednesday, March 17th?

A. Yes.

Q. Did any of you sign then?

A. No.

Q. Is that all that happened Wednesday?

A. That is all that happened Wednesday.

Q. Then shortly after that you were through for the day?

A. Yes.

Q. Did you come back to work Thursday?

A. Yes.

Q. What happened Thursday?

A. Thursday, about close to three o'clock, we called up Mr. Wilson's office.

Q. Who were the "we" this time?

A. The same except Louis Young.

Q. The same seven except Louis Young?

A. Yes.

Q. So there were six of you this time?

437 A. Yes; Louis Young was up before us.

Q. He had already been up?

A. Yes.

Q. Who was in the office this time?

A. Paulus and Mr. Wilson, Waterbury and Lenahan, McKinnon, Toth, and several others.

Q. Several others whose names you didn't know?

A. Yes.

Q. Now, tell us as best you can the conversation that took place in the office on that day?

A. Well, Lenahan asked the first man, Ed Cauley—

Q. Asked Ed Cauley?

A. Yes.

Q. Yes?

A. —if he wanted to sign a card.

Q. Yes?

A. He said he would do what the rest done.

Q. Who said that?

A. Ed Cauley.

Q. Cauley answered and said he would do what the rest did?

A. Yes.

Q. Then what was said?

A. He said: "I am not going any further."

Q. You keep saying "he" all the time. Try to use the name of the person you are referring to.

438 A. Lenahan said: "I am not going to the next man until I finish with you." So Ed Cauley walked out and we all followed him.

Q. Ed Cauley walked out after that remark?

A. Yes; walked outside of the office.

Q. And you all followed him?

A. Yes.

Q. Anything else said?

A. Lenahan said: "There you are. Give them their checks. They are fired."

Q. Lenahan said that to whom?

A. Mr. Wilson.

Q. Said they are fired?

A. Yes.

Q. Anything else said to you then by anybody? Did Mr. Wilson say anything to you?

A. Wilson was talking to a group, a fellow on the punch presses, I don't remember his name.

Q. You say Wilson talked to you as a group?

A. As a group, but he is the only one that answered.

Q. Where was this?

A. Outside the office.

Q. Right after this conference?

A. Yes.

Q. After you left?

439 A. After we left the door, we just stood outside the door. There were also some punch press men.

Q. Also standing outside?

A. Yes.

Q. Mr. Wilson came out?

A. Yes

Q. What did he say?

A. He came out to tell us that we should sign up with the Union, that we didn't know what we were doing.

Q. What did he say? Can you remember his words?

A. He said we were acting silly by not signing up.

Q. He said that?

A. Yes, sir.

Mr. Spieth: Will you speak a little louder, please?

Mr. Lodish: Do you want the last answer read?

Mr. Spieth: Yes.

Mr. Lodish: Will you read the last question and answer, please?

(Last question and answer read by the Reporter.)

Q. (By Mr. Lodish) By the way, up until that time,

had you ever heard anything about a closed shop?

A. Never did, no.

Q. Anything said about it during these conversations?

A. No, sir.

Q. Then the evidence shows that there was a sit-down?

440 A. Well, I don't know whether it would be a sit-down. We took it that we were fired and we come down and shut off the power. I think somebody else shut the power off, see, so we stayed in and figured our money was going to come down. So we stayed in all night.

Q. You stayed in all night, waiting for your money?

A. Yes. The whole department. Nobody told us we was not fired.

Q. Now you sat in all night and were there Friday morning?

A. Yes, sir.

Q. Now, what happened Friday morning after seven o'clock or so, when the new day started?

A. Well, Friday morning, McKinnon came in and he come down by the machine and he said: "If you don't want to work, get out." I started to get out by the door. There was two doors. After he told me that, he motioned some men to come in, so I went out the other door that opens from the inside. Somebody broke in from the outside and broke the glass with a blackjack, so a piece of glass hit me in the eye, so I had to go home, so I didn't know what happened after that.

Q. You were hit by a piece of glass at that time?

A. Yes.

Q. As you were trying to leave?

A. As I was trying to leave.

Q. Had you ever joined the C. I. O.?

441 A. Yes.

Q. When did you join the C. I. O.?

A. On the 19th, that night, or 18th.

Q. Thursday night, while you were sitting in?

A. Yes.

Q. Somebody gave you a card in the plant?

A. Yes, sir.

Q. Now, did you see the newspaper announcement about the plant's closing and opening again April 5th?

A. No; I didn't. I went out in the morning to go to work.

Q. Which morning?

A. That Monday morning following. A fellow come to the house, Walter Scott, told me it was all settled, that we could come in; it was all settled and we could go to work that Monday.

Q. Monday, March 22nd?

A. Yes. So when I got there there was a sign on the door that it was closed until further notice.

Q. Did you attend C. I. O. meetings after that?

A. I did.

Q. Did you ever attend a meeting in which you were asked whether you wanted to resign the American Federation of Labor?

A. I did.

Q. And did you indicate that?

442 A. I did.

Q. Did you try to get back to work after that?

A. I did.

Q. When was that?

A. It was the second week. The third Monday. The third Monday I went back and they wouldn't leave you in if you didn't have a yellow card.

Q. What do you mean by the third Monday?

A. I went back to work on a Saturday and it was the Monday before that.

Q. You mean the day the plant was actually opened?

A. Yes.

Q. That is April 5th?

A. Yes.

Q. You say you went back to the plant April 5th?

A. Yes.

Q. What happened then?

A. They wouldn't leave you in unless you had a card.

Q. Then what did you do?

A. I went home.

Q. Then what did you do after that? Did you ever

get a card?

A. I got a card on a Friday, on the 8th.

Q. Friday?

A. And Saturday was the 9th.

443 Q. Saturday was April 9th?

A. Yes—Saturday the 10th I went back to work.

Q. You started working on the 10th?

A. Yes.

Q. And you have beeen working ever since?

A. Yes.

Q. Have any of you men been hired at the plant in your department lately?

A. You mean after we went back?

Q. Yes.

A. There have been three.

Q. That is since April 10th?

A. Yes.

Q. When were those hirings, do you know—about when?

A. One of them was hired the first week. That is the first week after we went back.

Q. That is the first week after you went back?

A. Yes.

Q. That is the week of April 12th?

A. Yes.

Q. When were the next two hired?

A. The next two about a week ago.

Q. About a week ago?

A. Yes, sir.

Q. Some time last week was that?

444 A. Well, maybe it is a week and a half ago.

Q. First part of June?

A. Yes.

Mr. Lodish: That is all.

Trial Examiner Ringer: We will take a short recess at this time.

(Recess.)

Trial Examiner Ringer: Will you take the stand again, Mr. Boyes?

(Mr. Boyes takes the witness stand.)

Trial Examiner Ringer: Will the counsel, other than Regional Attorney, proceed now with any questions they may have to ask of this witness.

Direct Examination

Q. (By Mr. Carey) Mr. Boyes, you testified that you went down to the Metal Trades Council to secure clearance cards?

A. I did.

Q. Did you make request for a card?

A. I did.

Q. Did you have any difficulty in securing that card?

A. I did.

Q. Will you state what took place at that time?

A. There is a list of names there. They go down the line of the list of names. I suppose the name was not supposed to go back to wo

445 Mr. Spieth: I object. He said he supposed.

Trial Examiner Ringer: What he supposed may go out. Went down the list. Go ahead.

A. Went down the list. Then he stopped with his pencil on the desk and he hesitated. He said, "You are one of the fellows that caused the trouble out there." And I said, "What trouble did I cause?" And he said, "For Christ's sake, do you have to sit down with your men if you belong to the Union?" And I said, "I have to go along with the men." I started to walk out. I said, "All I know is I was told to come out here after a card." So he wrote the card out and he said, "Well, remember, any word out of you and it is your ass," or something.

Q. (By Mr. Lodish) Are you finished?

A. What did you say?

Q. Are you finished?

A. What is that?

Q. Are you finished answering that question?

A. Yes, sir.

Q. Was there any reference made to what that name list was?

A. I was told that there was a list.

Q. When you were told it was a list, how was it de-

scribed?

Mr. Spieth: I object. He doesn't say who told him or anything about it.

Trial Examiner Ringer: Let me ask him a question
446 if I may right there. Did you see the list there in the office?

The Witness: There was a list in the American Federation of Labor Hall with names on it.

Trial Examiner Ringer: Who was the man you were talking to there?

The Witness: Mr. Gordon.

Trial Examiner Ringer: And that list had names on it?

The Witness: Had names on it.

Trial Examiner Ringer: Now go ahead.

Q. (By Mr. Carey) In your conversation with the man you were talking to at the time, you had difficulty in securing your card, was there a name given to that list?

A. No.

Q. Did he make any statement: "Wait until I consult—"

A. No; there was two fellows before me. Evidently they go down that list until they come to the different names, I presume, because I can't figure out why he would throw his pencil down when he got down so far and tell me that.

Mr. Spieth: I object and ask that that go out.

Trial Examiner Ringer: I don't believe that is harmful. He did that, anyway, and hesitated when he got to a name.

The Witness: Yes. Jim Cronie saw it and he was there. Toth was writing Cronie up and Gordon was writing me up.

Q. You testified that you went back to your second conference, at which time members of the manage-
447 ment were in a conference with Union representatives on one occasion. The next occasion there was Mr. Waterbury and another member of the management?

A. Yes, sir.

Q. How many people were absent from the second conference that were present at the first conference?

A. Two.

Q. Why were those people absent from the second conference, to the best of your knowledge?

A. When I came down, Mr. Wagner come down and told me to take the gang up again, and I hollered at Louis Young and he said no, not Louis Young, just take five of them up.

Q. Was Louis Young an officer of the United Electrical and Radio Workers of America Local?

A. He is.

Q. What office does he hold?

A. Vice-Chairman I think.

Mr. Carey: That is all.

Trial Examiner Ringer: Any other questions?

Cross-examination

Q. (By Mr. Spieth) You say you talked with Mr. Wilson on this Thursday afternoon?

A. I didn't talk to him myself, no. He talked to us in a group.

Q. Where was this talk?

448 A. Outside of Wilson's office.

Q. And did Mr. Wilson say that you had to join the Union?

A. He told us we were silly if we didn't join the Union.

Q. Did he say you would lose your position or anything else if you didn't join the Union?

A. He didn't say that, no.

Q. Did he say that you were discharged?

A. Wilson did not say that, no.

Q. All Mr. Wilson said then, according to your statement, is that: "You boys are silly if you don't join?"

A. Yes.

Q. Then you went downstairs and went back to work?

A. Went downstairs, and we did not go back to work. Nobody said we was not fired.

Q. This was Thursday afternoon. There was not any trouble at that time; was there?

A. This was the time—yes, it was—Thursday afternoon.

Q. You say you had not been discharged then?

A. Well, Lenahan discharged us—ordered us discharged.

Q. Nobody in the company told you you were discharged?

A. They didn't tell us we was not. We didn't know what to do.

Q. Did you hear Mr. Paulus say anything to the men downstairs about not being discharged, to go home and come back in the morning?

A. I did not; no, sir.

449 Q. All you heard then was that Lenahan said they ought to be discharged?

A. Yes, sir.

Q. Who was McKinnon? Was he one of the business agents of the Union?

A. The American Federation of Labor, yes.

Mr. Spieth: That is all.

Trial Examiner Ringer: Any more questions?

(No response.)

Trial Examiner Ringer: That is all.

(Mr. Ed Ramsey takes the stand.)

Trial Examiner Ringer: Were you sworn to tell the truth in this case?

Mr. Ramsey: No.

(Mr. Ramsey sworn by Trial Examiner Ringer.)

ED RAMSEY, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Lodish) Will you state your name and address?

A. Ed Ramsey.

Q. Your address?

A. 774 152nd Street.

Q. East 152nd?

A. 152nd.

450 Q. East 152nd?

A. Yes, sir.

Q. Now, are you an employee of the Electric Vacuum Cleaner Company?

A. Yes, sir.

Q. Now Mr. Ramsey, there is some testimony in this case that you were fired at one time and then advised that you were not fired. Now I am interested in getting that story. When was it that you were fired?

A. On the 8th day of March.

Q. That is the same day that there was a sit-down strike?

A. Same day.

Q. Were you fired before the sit-down strike?

A. I was fired before.

Q. All right. Now, tell us the circumstances, what happened? What time of day was it when this began?

A. About half past one or a quarter to two.

Q. About half past one or a quarter to two in the afternoon?

A. I am not quite sure. It was between two-thirty—I mean one-thirty and two o'clock.

Q. At any rate, early in the afternoon?

A. Yes.

Q. Where were you—working?

A. I was working, yes.

451 Q. Then what happened? Tell us the events. Did somebody come up to you?

A. I was sitting there running a machine and I was told to come up in the office.

Q. Who told you to come up in the office?

A. The foreman.

Q. What is his name?

A. Name is Wagner.

Q. Sam Wagner?

A. Yes.

Q. Did you go up to the office?

A. I did.

Q. Who else was with you?

A. Man by the name of Vargo, Lefty Fargo. Fellow by the name of Kiss.

Q. Kish?

A. Kiss, I guess.

Trial Examiner Ringer: You will have to speak a little louder so the gentlemen back there can hear.

Q. Who else?

A. A fellow from the Automatic room. I don't know his name.

Q. That is all. Just about four of you?

A. Four I should guess.

Q. You went up to the office?

452 A. Yes, sir.

Q. Who did you find up there?

A. Well, there were about four A. F. of L. men.

Q. Do you know any of their names?

A. I only know one name is Callahan.

Q. Lenahan?

A. Lenahan.

Q. All right. And who was there from the company?

A. Mr. Waterbury and Paulus, the superintendent.

Q. By the way, I didn't ask you: How long had you worked there altogether?

A. All told?

Q. Yes.

A. A little over seven years.

Q. All right now. You went up to the office. Now tell us as nearly as you can the conversation that occurred in the office and who said what? As best you can recollect.

A. Well, Mr. Lenahan was talking to another fellow there, one of the representatives—

Mr. Woodle: We can't hear back here.

Mr. Lodish: Will you read what he said so far? Then will you try to speak a little louder, please?

(Last answer read by the Reporter.)

A. (Continuing). They were talking to one another about who would take charge of the meeting, so they

453 left it to Mr. Lenahan, and Mr. Lenahan said that they had a contract with the firm and that they would—that they had a contract with the firm and that the boys would have to sign up.

Q. All right. What else was said by anybody?

A. And they spoke to one of the other boys, I don't know his name; they said he was talking too much, and he happened to be one of them.

Q. I am sorry. I didn't quite get that. Who said he was talking too much? Did Lenahan say that?

A. They were not talking to me. I am just telling what was going on.

Q. I am trying to get that out of you. Who said you are talking too much or they are talking too much?

A. One of the boys on the Automatics there, he happened to be an American Federation of Labor man and they started on him and they just told him what he was going to be, and they got to jangling there some way, and it finished up anyhow that they left him go back to work.

Q. Do you know who that was?

A. I don't know his name. I know him by sight.

Q. And he went back to work?

A. He did.

Q. He left you there?

A. They all left me there.

Q. Did all of them leave except you?

454 A. They all left me there and they asked me if I would sign up and I said I wouldn't unless I had to.

Q. Did the others sign up before they left?

A. The others did sign up.

Q. So you were the only one left that hadn't signed up?

A. The only one.

Q. So when you were left there alone, as far as the employees were concerned, who else was in the room? Were the other men still there?

A. The representatives and Mr. Paulus and Mr. Waterbury.

Q. What happened after that while you were there alone?

A. They said I was fired.

Q. You said you wouldn't sign up unless you had to?

A. Yes.

Q. What was the next thing said?

A. Well, "you are fired."

Q. Who said that?

A. Mr. Lenahan.

Q. Then what happened?

A. Nothing. I turned around and went out.

Q. What did you do about it?

A. Nothing.

Q. Where did you go?

A. Downstairs.

Q. Down to your department?

455 A. Yes, sir.

Q. Is that the Machine Shop?

A. The Press Room, yes.

Q. What did you do next? Did you talk about it? Did you tell people about it? Did you walk out of the Plant? What did you do?

A. I didn't walk out of the plant. I was wanting to go out and the other boys were coming out of the office and I stayed.

Q. When did the strike begin—the cessation of work?

A. About between one-thirty and two o'clock on the 18th.

Q. Was it after you came down?

A. After I came down.

Q. Did it have any connection with your coming down, do you know?

A. I think it did.

Q. What makes you think that? What happened that makes you think that?

A. They were all standing around when I come down, and the boys refused to work when they started to discharge them.

Q. When they what?

A. When they started to discharge the rest of them.

Q. Who else was discharged besides you?

A. I don't know. I was not up at the office.

Q. When you came down, did other people go up to the office?

A. Yes.

456 Q. Then they came down and said they were discharged?

A. They said so.

Q. Who were they?

A. I couldn't tell that, because there was a gang of them crowding and I was not in the center of them. I was on the outside.

Q. And then this commotion began and people stopped working?

A. Yes.

Q. Did you sit in all night?

A. I did.

Q. Were you there all day Friday?

A. I was there all day Friday.

Q. Until what time?

A. Until about two or two-thirty, something like that.

Q. Now, while you were there all right, did anybody say anything to you, anybody from the management?

A. No.

Q. How about Friday? Did anybody say anything to you Friday?

A. No.

Q. Then you left when everybody else left, after Chief of Police and Walter Scott were there?

A. After Mr. Scott and Chief of Police from East Cleveland spoke to the boys and I was in the rear and had a contract of some kind, and they agreed to come in
457 the 21st day of June, agreed to work together until the 21st day of June.

Q. 21st day of June?

A. That is the way I understood it.

Q. You mean the contract expired then?

A. The contract was supposed to expire at that time.

Q. Now was anybody present representing the management, any of the officers when Chief of Police Corlett and Mr. Scott discussed this?

A. I didn't see any of them.

Q. You don't know?

A. No.

Q. And when did you get back to work then?

A. I got back to work the 22nd day of April.

Q. Did you try to get back before then?

A. I did.

Q. When was the first time you tried?
A. Same day that all the boys tried to come back.
Q. April 5th?
A. I think it was April 5th.
Q. What happened on that day?
A. Well, I couldn't get in because I had no card.
Q. Did you get a card?
A. I went down there and didn't get any.
Q. Why not?
A. They said the place was filled.
458 Q. Did you eventually get a card?
A. I did.
Q. When did you get the card?
A. About the 21st of April.
Q. And about how many times did you try before that?
A. Only that once, the 5th, I applied for a card, and the 21st day of April I asked for another and I got it this time.
Q. You asked for it at the same place?
A. Yes.
Q. And this time they gave it to you?
A. Yes.
Q. And when did you go back to work—the next day?
A. The next day.
Q. April 27th?
A. Yes.
Q. Did you earn any money between March 19th and April 22nd?
A. No.
Q. You got no relief or anything of that kind?
A. No.
Q. What is your hourly wage at the Electric Vacuum Cleaner Company?
A. At that time was sixty-two cents.
Q. At that time—is it different now?
A. Yes; it is seventy-five cents now.
Q. But the last day you worked there it was sixty-two cents?
459 A. Yes.
Q. March 19th it was still sixty-two cents?

A. Last day I was in that shop until the 22nd day of April.

Mr. Lodish: That is all.

Direct Examination

Q. (By Mr. Carey) Mr. Ramsey, where did the conference take place with Mr. Paulus, Waterbury, and Mr. Lenahan, that resulted in what you understood to be your discharge?

A. The conference occurred in he office upstairs on the second floor, but the number of the office I don't know.

Q. Do you know whose office that was?

A. What?

Q. Do you know whose office?

A. I don't.

Q. It was an office in the company?

A. It was the first time I was up there.

Q. Mr. Lenahan stated that you were fired?

A. Yes.

Q. Did Mr. Paulus or Mr. Waterbury correct that statement?

A. No.

Q. Did they in any way attempt to tell you you were not fired?

A. Nobody said anything to me about it.

Q. As you understood it, you were fired?

A. That is how I understood it.

460 Mr. Carey: No further questions.

Cross-examination

Q. (By Mr. Spieth) After you left the conference at which you say Mr. Lenahan said you were fired, were you requested to come back again?

A. I was.

Q. And you refused to come back?

A. I certainly did.

Q. You didn't know what they wanted you to come back for did you?

A. I did not.

Q. After you went downstairs, did you see Mr. Paulus that afternoon again?

A. He walked through.

Q. Isn't it a fact that Mr. Paulus came up and slapped you on the back and said: "Forget all this; you are not fired. Go home and come back in the morning?"

A. Mr. Paulus?

Q. Yes.

A. He didn't say nothing to me at all about that.

Q. Did you see him make any remarks to any of the men around there about going home and coming back in the morning?

A. I did not.

Q. Mr. Paulus did not say to you that you were fired?

A. No.

461 Q. And none of the officials of the company said that you were fired?

A. No.

Q. Then if Mr. Koutnik testified that Paulus came down and, in his presence, slapped you on the back and said: "Forget it; you are not discharged. Go home and come back in the morning," Mr. Koutnik was mistaken?

A. I never heard Mr. Paulus say anything like that.

Q. Did he say anything at all to you?

A. I don't think he did. He spoke to somebody. I was about ten feet away. He spoke to him, but I didn't hear what he said. I was the only one in that room that I know of that was a discharge.

Q. You say the discharge came from Mr. Lenahan?

A. Yes; up in the office.

Mr. Spieth: That is all.

Trial Examiner Ringer: Any question, Mr. Woodle or Mr. Wachtel?

(No response.)

Examination by Trial Examiner Ringer.

Q. (By Trial Examiner Ringer) Just what did Lenahan say to you?

A. Busy talking there, and I started out and he said,

"You are fired."

Q. Was anything said by any of the officials of
462 the company now immediately following Lenahan's saying that?

A. No.

Q. So you turned and walked out?

A. That is what I did.

Trial Examnier Ringer: All right.

Mr. Woodle: Just a minute. I just want to get this picture straight.

Cross-examination

Q. (By Mr. Woodle) Were you standing near the door of this office when Lenahan turned to you and said you were fired?

A. No, sir; I was on my way out.

Q. You were on your way out and you heard Mr. Lenahan say to you: "You are fired" like that?

A. He told me to step out in the other room.

Q. Beg pardon?

A. He said: "You are fired; step out in the other room," and I went out.

Q. You were walking out at the time?

A. No. He said, "You are fired," and I started out. He said: "Step in the other room," so I went out.

Q. You didn't wait to hear whether Mr. Paulus or anybody else at the office had anything to say, did you?

A. I stood a couple minutes watching the boys sign up and I went out and followed them out a minute afterwards.

Q. Was the door closed out after you went out?

463 A. No, sir.

Q. When you were standing there did you hear any conversation?

A. I did not. I don't hear so good, you know.

Q. You don't hear very good?

A. No; I don't hear so good.

Q. Then when they asked you to come back again, you just didn't go back?

A. I didn't go back. I was fired and I was a little bit

upset.

Q. You thought you were fired?

Mr. Carey: Objection.

Trial Examiner Ringer: Overruled.

A. He said I was fired.

Mr. Woodle: That is all.

Trial Examiner Ringer: Next witness.

(Mr. Howard Lowrance takes the stand.)

HOWARD LOWRANCE, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Lodish) Will you state your full name and address, please?

A. Howard Lowrance, 1128 East 176th Street.

Q. You spell your Lowrance a little bit different; don't you?

A. L-o-w-r-a-n-c-e.

464 Q. Are you working now, Mr. Lowrance?

A. No, sir.

Q. Where did you work last?

A. Electric Vacuum Cleaner Company.

Q. What was the last day you worked there?

A. March 19th.

Q. And have you earned any money or gotten any by way of relief since that date?

A. No, sir.

Q. How much were you making?

A. Sixty-eight cents an hour.

Q. Forty hours a week?

A. Yes, sir.

Q. What was your job at the Electric Vacuum Cleaner Company?

A. Welding.

Q. How long had you worked there?

A. About eight years. Eight years in June.

Q. Almost eight years?

A. Yes.

Q. Now did you originally belong to the MESA?

A. Yes, sir.

Q. How long did you continue paying dues after the strike of 1935?

A. Until November, 1936.

Q. You paid dues for almost a year and a half?

465 A. Yes, sir.

Q. What happened in November of 1936?

A. Local 720 of the MESA voted to go over into the United Electrical and Radio Workers of America.

Q. And thus became a C. I. O. affiliate?

A. Yes, sir.

Q. Now, did you ever join the American Federation of Labor?

A. Yes, sir.

Q. When was that?

A. In August, I think it was, 1936.

Q. In August, 1986?

A. Yes.

Q. And now during that time, according to your testimony, you were a member in good standing with the MESA?

A. Yes, sir.

Q. Paying dues?

A. Yes, sir.

Q. But in spite of that you joined the American Federation of Labor?

A. Yes, sir.

Q. Did you pay anything to the American Federation of Labor?

A. I paid my initiation fee, and I think four months' dues.

Q. Initiation fee and four months' dues?

466 A. Yes.

Q. So that that carried you into early in 1937?

A. Up to December, 1936.

Q. And did you pay anything to the American Federation of Labor at all in 1937?

A. No, sir.

Q. Now up to say about March 9th or 10th, were you ver approached about your American Federation of Labor nembership?

A. I was approached practically every month for my lues.

Q. Just dues?

A. Yes.

Q. And what did you do about that?

A. Well, I just paid them as I had to; that was all.

Q. What do you mean by that? They would ask you few times and you would pay once maybe out of three mes, something like that?

A. They would usually come to me the last payday f the month and say, "What about paying your dues?" paid my dues. I was always three months in arrears. hat is what they allow you.

Q. You just got in under the wire, in other words?

A. Yes, sir.

Q. Who was it that solicited dues from you?

A. Mr. Rinehart.

Q. What particular union is that?

A. That is the Metal Polishers and Buffers.

Q. Now, did you ever join the—I withdraw that. ou were then a member of the C. I. O. late in 1936 by rtue of your MESA transfer?

A. Yes, sir.

Q. Were there any other Electric Vacuum Cleaner ompany employees who did the same thing you did?

A. Not that I know of.

Q. You are the only one that stayed on that long?

A. Yes, sir.

Q. Now I believe the evidence shows that you became tive in this matter March 16th?

A. Yes, sir.

Q. Now, will you tell us what you did March 16th, or at was said or done by you or to you?

A. Well, there was a number of employees come to me that date and asked me if I had any connection with the I. O., and I told them I could get any connections they nted, and I was asked to arrange for a meeting on that

date, which I did.

Q. Now, you heard Mr. Koutnik testify about his conversations with you in this case; didn't you?

Q. And was his testimony substantially correct?

A. His testimony was correct.

Q. Now, did you then arrange for a meeting?

468 A. Yes, sir.

Q. And whom did you contract for that?

A. Mr. Scott.

Q. And when was the first meeting?

A. It was on Wednesday, I believe, the 16th of March.

Q. That would be March 17th—Wednesday?

A. 17th.

Q. And that is the meeting that the evidence shows was attended by sixty or seventy people?

A. Approximately that many, yes.

Q. Now, did you then begin the circulation of applications in the plant after that?

A. Yes, sir; the following day.

Q. Pardon?

A. The following day.

Q. That is Thursday?

A. Thursday.

Q. Now, did you, the following day, Thursday, have any conversations with any of the officials of the company?

A. I did not.

Q. You were in the plant when the sit-down strike occurred?

A. Yes, sir.

Q. You were not in that; were you?

A. The sit-down strike occurred about the time I was going home. I quit work at three-thirty.

469 Q. Did it start before you left?

A. About five or ten minutes before I left.

Q. So that you knew that the work was stopped?

A. Yes.

Q. And then you went home?

A. I didn't go home, no. I went to Mr. Scott's house.

Q. Now, the following morning, Friday, did you come back to work?

A. Yes, sir.

Q. And did you do any work that day?

A. No.

Q. Now, I don't remember whether the evidence shows that you were involved in getting Mr. Scott; were you—on Friday?

A. Yes, sir.

Q. Did you go out to get him?

A. I went out to get Mr. Scott.

Q. Then, did you go with him to Chief of Police Corlett?

A. Yes, sir.

Q. What happened there—what time of the day was this when you were over to Chief of Police Corlett's office?

A. It was around noon when I went to Chief of Police Corlett's office the first time.

Q. Was Mr. Scott with you?

A. Yes, sir.

470 Q. And just the three of you there and nobody else?

A. That is right.

Q. What happened—what did Chief of Police Corlett do?

A. Well, he called us into his office. We had a meeting with Chief of Police Corlett in the United Automobile Workers earlier in the morning on that, and he told us that he had gotten a contract with the company and wanted us to draw up some kind of an agreement that we would agree with and he would take it to the company, so we drew it up in the office of the Automobile Workers and he took it to the company, and the company refused to agree to that one, and then he called us to his office and we rewrote the whole thing, and he took it to the company again, and we remained in his office until he called for Mr. Scott to come down to the plant.

Q. Now this second thing that you talk about—is that Board's Exhibit No. 19?

A. That is.

Q. And this is what has been testified to was later

read or discussed in the plant and resulted in the men leaving Friday afternoon?

A. Yes, sir.

Q. Now did Chief of Police Corlett call anybody on the telephone while you were there?

A. No; not while I was there.

471 Q. Now he left. He went somewhere and then called Mr. Scott, you say?

A. Yes, sir.

Q. Were you involved in this too at that time?

A. I was.

Q. What did you do then?

A. Mr. Scott and myself was in Chief of Police Corlett's office, waiting for him, when he called.

Q. When he left, he left you there?

A. Yes.

Q. What did he say? Where was he going?

A. To the office of the Electric Vacuum Cleaner Company with this agreement.

Q. How did he communicate with you? Did he come back or call by phone?

A. Called by phone.

Q. At his office?

A. Yes.

Q. Did you talk to him or did Scott?

A. No; the desk sergeant told us that Chief of Police Corlett wants us to come to the office of the company.

Q. Did you then go to the plant?

A. We did.

Q. All right. Now tell us what you did then?

472 A. I went to the plant with Mr. Scott, but I didn't go in the plant with him. I remained outside when he went in.

Q. Then Mr. Scott went in and you know nothing else about it at that time?

A. No; not at that time.

Q. When did you go in the plant? Did you go in before it was evacuated?

A. I have not been in the plant since, except one time I went to the office of the company.

Q. When was that?

A. I think that was on or about April 23rd.

Q. All right now. After March 19th, what efforts did you make, if any, to get back to work after the plant reopened?

A. I didn't make any effort to get back to work, because I knew you had to have an American Federation of Labor card which I didn't have—a clearance card, as they call it—and I remained at the work of the United Electrical and Radio Workers until we had a conference, I think it was on a Wednesday, in one of the hotels downtown here. I don't just recall the name.

Q. To refresh your recollection, was it the Hollenden Hotel on Sixth and Superior?

A. That is right.

Q. All right.

A. At this conference there was various leaders of the C. I. O. and also the American Federation of Labor
473 present, and also Mr. Ralph Lind, at which time we discussed the settling of the problem to get all the employees back to work. The following day we had a meeting and made a report at this meeting of what took place in the conference. And there was a vote taken that every one would return to work the following Monday, which was April 12th. And that was on Saturday I think it was. That was the first time I went to American Federation of Labor headquarters for a card.

Q. Saturday, April 10th?

A. Yes.

Q. That is before the Monday you were supposed to go back?

A. Yes.

Q. What happened when you attempted to get a card Saturday, April 10th?

A. I went to Mr. Muehlhoffer's office. He was not in. Mr. Rinehart and also the Shop Committee of the Polishers' Local were present.

Q. What happened there?

A. I asked them for a card and they said: "Nothing doing. You are through in the Vacuum Cleaner. You will

never work there again."

Q. Anything else? Any other efforts after that?

A. Yes; I was back there on four or five times after that. I think it was on a Wednesday of that same week I went back and talked to Mr. Muehlhoffer, and he told
474 me personally the same thing, that I was through at the Vacuum Cleaner; that so far as he was concerned he didn't care what happened to me.

Q. Now, Board's Exhibit No. 19 says something about: "We agreed to go back to work with the reinstating of the two men discharged yesterday," dated March 19th. I don't think it is in evidence who those two men were. Do you know their names?

A. Mr. Ramsey was one of them and, if I am not mistaken, the other one was Mr. Young.

Q. Louis Young?

A. Louis Young. I am not sure, but I know one of them was Mr. Ramsey.

Q. Now, were you present at the meeting in which people were asked whether they wanted to switch from American Federation of Labor to C. I. O.?

A. I was.

Q. Was your name called out?

A. Yes, sir.

Q. And did you designate by answering "yes" or the number, whichever it was?

A. I did.

Mr. Lodish: That is all.

Trial Examiner Ringer: Any further questions?

Direct Examination

Q. (By Mr. Carey) Were you elected to office of the Local No. 720 of the United Electrical and Radio
475 Workers of America?

A. I was.

Q. What office did you hold?

A. Financial Secretary and Treasurer.

Q. As Financial Secretary and Treasurer, do you receive the application cards of those seeking membership in that Local organization?

A. I do.

Q. How many application cards have you received signed?

A. Five hundred and seventy-three.

Mr. Spieth: I object. The cards are the best evidence.

Trial Examiner Ringer: That would be true of the contents, but the number of them, he can testify to. What was the answer?

The Witness: Five hundred and seventy-three.

Mr. Carey: No further questions.

Trial Examiner Ringer: Respondent?

Cross-examination

Q. (By Mr. Spieth) Until Chief of Police Corlett contacted the company on this Friday that you speak of, as far as you know, the company had not been advised as to the cause of the sit-down strike; had it?

A. As far as I know, it had. Sure, the sit-down was caused because the men that were discharged—

Q. I am just asking you if you know, of your own knowledge?

476 A. Well, I couldn't swear to it; no.

Q. You didn't have any contact with the company in regard to the sit-down?

A. I did not.

Q. You didn't have any talk with Mr. Paulus or any of the officers of the company?

A. No, sir; not at that time.

Mr. Spieth: That is all.

Trial Examiner Ringer: Is that all?

Mr. Woodle: No questions.

Mr. Lodish: Just one question, Mr. Examiner.

Redirect Examination

Q. (By Mr. Lodish) Did you ever hear any talk about a closed shop; and if so, when was the first time?

A. I never heard any talk about a closed shop, no.

Mr. Lodish: That is all.

Recross-examination

Q. (By Mr. Spieth) Do you know what the company arrangement was with the Federation with regard to th employment of new men?

A. I do.

Q. You were one of the Committee that came in afte the first strike was settled, when the announcement wa made that the men that were then in the employ of the com pany did not have to join any union, but the new me
477 would be required to join the Federation?

A. I was.

Q. So you knew that was the arrangement that th company had with the American Federation of Labor?

A. I knew that was the arrangement the company ha with the American Federation of Labor, that the new em ployees would have to join, but the old employees did not but I was forced into it anyhow.

Q. When you said you never heard of the closed sho agreement, you didn't take into consideration this an nouncement the company made?

A. I wouldn't consider that a closed shop.

Mr. Spieth: That is all.

Trial Examiner Ringer: That will be all. We wil adjourn at this time until tomorrow morning at this sam place at ten o'clock. Please all note, ten o'clock.

(Thereupon, at 5 o'clock p. m. adjournment was had t Wednesday, June 16, 1937, at 10:00 o'clock A. M.)

478 Room 2, New Court House,
Cleveland, Ohio,
Wednesday, June 16, 1937.

The above-entitled matter came on for hearing, pursuant to adjournment, at 10 o'clock a. m.

Before: William P. Ringer, Trial Examiner.

APPEARANCES:

Harry L. Lodish, Regional Attorney, on behalf of the National Labor Relations Board.

L. C. Spieth and H. A. Spring, 1568 Union Trust Building, Cleveland, Ohio, on behalf of the Electric Vacuum Cleaner Company, Inc.

Sam H. Griff, 610 Public Square Building, Cleveland, Ohio.

James B. Carey, 1133 Broadway, New York, New York, on behalf of United Electrical & Radio Workers of America, Local 720.

Edwin F. Woodle and Bernard Wachtel, 318 Leader Building, Cleveland, Ohio, on behalf of A. F. of L. Affiliated Unions.

John H. Orgill, 1000 Guarantee Title Building, Cleveland, Ohio, on behalf of Cleveland Federation of Labor.

479 PROCEEDINGS.

(The hearing was resumed at 10 o'clock A. M., pursuant to adjournment.)

Trial Examiner Ringer: Are you ready?

Mr. Lodish: I think so. I have got a formal matter here to get into. Mr. Examiner, the Reporter advises me that Board's Exhibit No. 21 and Board's Exhibit No. 22 shows some comment regarding the objections but no specific offer. I was under the impression I had offered them, and if I failed to, I do that now.

Trial Examiner Ringer: My record does not show they have been offered.

Mr. Lodish: I offer them as part of Mr. Pascoe's testimony.

Mr. Wachtel: I am going to object to the exhibits being offered in testimony for the reason that there has been no evidence offered that there was a bona fide organization existing at the time Mr. Pascoe was doing the organization work, and it was supposed to be the Constitution of a bona fide Local.

Trial Examiner Ringer: That will be overruled. If something is brought in that strengthens that, it would be a different thing, but tentatively they will be admitted for what they are worth.

(The papers referred to were received in evidence and marked "Board's Exhibits Nos. 21 and 22, Witness Pascoe.")

480 Mr. Lodish: At this time I would like to announce that in response to the colloguy we had the other day I have had produced for my inspection the charter of the United Electrical and Radio Workers of America, Local No. 720. Now for obvious reasons of size, I believe it advisable to merely read it into the record rather than put it bodily into the record. It shows the signature of James B. Carey, who was the General President of United Electrical and Radio Workers of America, and who happens to be present in the court room so that I can call upon him to properly identify it, and then read it into the record.

Mr. Orgill: Why don't you put in a copy?

Mr. Lodish: It is all right with me.

Mr. Orgill: If you get it into the record as a copy, if they want to use it in argument, then you have got it.

Mr. Lodish: Will you take the stand please, Mr. Carey?

JAMES B. CAREY, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Testimony of James B. Carey

Direct Examination

Q. (By Mr. Lodish) Will you state your name and address, please?

A. James B. arey, office address: 1133 Broadway, New York City.

Q. What is your occupation?

481 A. Executive of the United Electrical and Radio Workers of America.

Q. And as an executive, what position do you hold?

A. The position of General President.

Q. As President of the United Electrical and Radio Workers of America, is it within your function to charter locals or assist in the chartering of locals?

A. Yes, sir.

Q. You have no objection to marking this; have you?

A. No.

Mr. Lodish: Mark this document as a Board's Exhibit for identification.

(Board's Exhibit No. 23 marked for identification.)

Q. (By Mr. Lodish) Mr. Carey, I now hand you a document which is apparently about fifteen inches by eighteen inches in size and is marked for identification as Board's Exhibit No. 23 and ask you if you ever have seen that before?

A. Yes, sir; I have.

Q. And is that your signature on that document?

A. Yes, sir.

Q. Will you tell us when you executed that document and under what circumstances and where?

Mr. Orgill: Objection.

Trial Examiner Ringer: Overruled.

A. An application for a charter affiliation was 482 received by the organizers of the Electric Vacuum Cleaners.

Mr. Orgill: Objection. The answer is not responsive to the question.

Trial Examiner Ringer: Overruled.

A. The application was received at our office at 1133

Broadway, New York City. The Secretary and Treasurer, in accordance with the procedure in our organization, made out the charter affiliation and presented it to me for the additional signature necessary on the charter.

Q. What is your secretary's name?

A. Julius Emspak. His name is attached to the charter.

Q. All right.

A. The charter was signed the day before or on April 1st, 1937. It then was sent to those that made the application for the charter.

Q. Now you stated that an application was received. Can you recollect when that application was received?

A. The application was received about March 21st, 1937.

Q. And after you signed the charter, what did you do with it?

A. Charter was then turned back to the Secretary-Treasurer, who mailed it to those who made application for the charter.

Q. And did you instruct him to mail it?

A. The instruction is a general procedure of our organization.

483 Mr. Lodish: Mr. Examiner, Mr. Pascoe testified that he received the charter and at my request said it would be produced. Now Mr. Pascoe has found it necessary to leave town—is that right?

The Witness: Yes, sir.

Mr. Lodish: And I have the original container of this charter and would like to read it into the record. It shows: six cents cancelled postage, the postal dates being illegible. The sticker shows it addressed to Mr. J. Pascoe, 1002 East 149th Street, Cleveland, Ohio, in the care of Scott, and the return address from U. E. and R. W. A., 1133 Broadway, New York City, and a large "720" written on the cover in ink. At this time, for the purpose of convenience, I should like to read the contents of the charter into the record and instruct Mr. Carey to get copies, if possible, so that they may be available for this record. The charter has in gold letters and a circular formation in the center of it the

inscription: "United Electrical and Radio Workers of America." It has a gold leaf seal stating: "United Electrical and Radio workers of America, National Office," which seal is pasted upon a small red ribbon. Then beginning with the top of the printing on the document itself we have: "United Electrical and Radio Workers of America," a top heading, and then the first paragraph, indentation, begins with: "Know all men by these presents,
484 that, acting under the authority vested in us by the laws of the above-named organization, we, the undersigned, do hereby grant this charter," and "charter" being set forth in heavier type, "to a body who are hereinafter to be known and designated as Local 720." "Local 720," being inscribed in heavier type and placed upon a line. The next paragraph begins: "It is hereby agreed in the acceptance of this charter that the aforesaid union shall conform to the Constitution Rules and Regulations of the United Electrical and Radio Workers of America." Third paragraph: "In consideration of the due and faithful performance of the foregoing stipulation, the United Electrical and Radio Workers of America do bind themselves to sustain said union in the rights, provileges, and benefits as a Union under their protection." And the fifth paragraph: "In witness whereof we have subscribed our names and affixed our seal this," then in ink," "first," then printed, "day of," then in ink, "April," then printed, "19," then in ink "37." And under that in ink, "James B. Carey," and under the line, printed: "President." Then, in ink, "Julius Emspak,"—J-u-l-i-u-s E-m-s-p-a-k—and under the line, printed, "Secretary-Treasurer." And it shows a stamp followed by the number: "forty-seven," the stamp being very small and showing the following inscription: "Allied Printing Trades Council, Union Label, Philadelphia."

Q. (By Mr. Lodish) Is the document that I have just read into the record the original charter that you
485 helped execute and send to Cleveland?

A. Yes, sir.

Mr. Lodish: That is all.

Mr. Orgill: Are you introducing the container?

Mr. Lodish: No; I have read it in.

Trial Examiner Ringer: You have not made any formal offer of Board's Exhibit No. 23.

Mr. Lodish: No; I substituted a reading into the record of the original because of its size and its nature. I also requested that a copy be produced if such a request is made by counsel.

Trial Examiner Ringer: If such a copy is produced, will you then offer it in evidence as Board's Exhibit No. 23?

Mr. Lodish: No; I have no interest in the copy.

Mr. Orgill: We ask the Court to instruct the witness to produce an authenticated copy.

Trial Examiner Ringer: An authenticated copy?

Mr. Orgill: Yes. That is the proper procedure, if I understand the laws of evidence, that they have the right to produce an authenticated copy, and that is what we are asking the Court to instruct the witness to do.

Mr. Lodish: I have no objection.

Trial Examiner Ringer: I have no objection at all, if that can be done. Can it, Mr. Witness?

The Witness: Yes, sir; it can be done.

486 Mr. Lodish: Do they want photostatic copies?

Trial Examiner Ringer: As I understand, what you want is one that is stamped by the officers as a correct copy of the original?

Mr. Orgill: That, if I understand it, is the orderly and correct procedure.

Trial Examiner Ringer: I instruct you, therefore, to produce that copy to be used as evidence. Any questions now by any of the counsel?

Cross-examination

Q. (By Mr. Orgill) You say you received an application for the charter from whom?

A. The application is forwarded by our representative in the community.

Q. Do you have that application?

A. Not with me. The application is in the form of a letter notifying the National Office that fifteen or more employees of a particular company, under our jurisdiction—

Q. I didn't ask you that. I asked you if you had the application. Do you have the application?

A. Not with me; no, sir.

Q. Where is the application?

A. The application is in our files in New York City.

Q. Will you produce it for us?

A. I could produce it.

487 Mr. Orgill: I ask the Court to instruct the witness to produce the original application.

Trial Examiner Ringer: On what theory do you feel that that is necessary?

Mr. Orgill: That it is the best evidence. Maybe the Court's judgment would be different. It will speak for itself.

Trial Examiner Ringer: That will be overruled.

Q. (By Mr. Orgill) Now you signed the charter, so I understood you to say, and after you had signed it you gave it to somebody else. To whom did you deliver it?

A. The Secretary-Treasurer of our organization.

Q. Who is that?

A. Julius Emspak.

Q. And after you delivered it to that particular person, you have no personal knowledge of what happened?

A. Personal knowledge is the fact—the only personal knowledge I have of the fact that it was delivered is, of course, it was in line with the procedure of our organization that it be done on that basis.

Q. But you did not—

A. I did not personally carry the thing to Cleveland; no, sir; I did not.

Q. And you did not personally see it mailed?

A. No; but I see by the evidence placed before the Board—the cancelled stamps.

488 Q. I asked you if you saw it mailed?

A. No, sir; I did not.

Q. From your own personal knowledge, you don't know whether it was mailed or not?

A. From my own personal knowledge and from the cancelled stamps, I can say that it was mailed.

Q. Will you please answer the question?

Trial Examiner Ringer: I think he has answered it.

Mr. Orgill: He is just giving me an argument.

A. I cannot testify it was not mailed, because the evidence shows it was mailed.

Q. (By Mr. Orgill) But you didn't see it mailed; did you?

A. No, sir.

Q. And you don't know when it was mailed, do you?

A. No, sir; that is true.

Mr. Orgill: That is all.

Mr. Woodle: On behalf of my clients, I would like to make a formal request that the original application for this charter be presented, as there seems to be considerable doubt as to whether the complainant in this case came into existence and whether, for the purpose of this case, it was in existence for the purpose for which it claims to be in existence at the time during which all the facts concerning the circumstances which have been presented took place.

Trial Examiner Ringer: Overruled.

489 Mr. Woodle: And if the application was made on March 21st as Mr. Carey says, I think we are entitled to know that from the application itself.

Trial Examiner Ringer: Overruled. Next witness. Now, your questions, Mr. Orgill, were on behalf of the Respondent in this particular situation?

Mr. Orgill: I presume they were on behalf of the Cleveland Federation of Labor.

Mr. Spring: I don't know, Mr. Examiner, the situation. I have not been here for three or four days, and I don't know what is going on. Mr. Spieth, this morning, is attending the graduation of his daughter from college, and I think the Respondent for this particular session would be very happy to have Mr. Orgill represent it as counsel, so if your record will show that those questions were asked on behalf of Respondent as well as Cleveland Federation of Labor.

Trial Examiner Ringer: Let the record so show, because there might be a question later as to who made the objection or asked the question.

(Jewel Smith takes the stand.)

Trial Examiner Ringer: Were you sworn?

Mr. Smith: No.

(Mr. Smith sworn by Trial Examiner Ringer.)

JEWEL SMITH, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Lodish) Will you state your full name and address, please?

A. Jewel Smith.

Q. How do you spell the first name?

A. J-e-w-e-l.

Q. And your address?

A. 1181 East 147th Street.

Q. 1181 East 147th Street?

A. Yes, sir.

Q. Are you working now?

A. No.

Q. Where was the last place you worked?

A. At the Premier.

Q. Pardon?

A. That was my last place, at the Premier.

Mr. Orgill: Will you speak louder? I didn't hear what you said.

The Witness: The last place I worked was at the Premier.

Q. (By Mr. Lodish) You worked last at the Electric Vacuum Cleaner Company?

A. Yes, sir.

Q. Have you earned any money or gotten any money by way of relief since that date?

A. No, sir.

Q. What was the last day you worked there?

A. It was on a Friday.

Q. The day it closed?

A. Yes.

Q. March 19th?

A. Yes.

Q. How long had you worked there altogether?

A. About a month and a half.

Q. You were hired about the same time—withdraw that. About a month and a half?

A. Yes, sir.

Q. What was your job there?

A. Soldering.

Q. Soldering?

A. Yes.

Q. How much were you getting an hour?

A. I was getting about forty-three cents an hour.

Q. Aren't you sure of exactly what you were getting?

A. No, sir.

Q. How many hours did you work a week?

A. I worked forty-eight hours a week.

Q. Forty-eight?

A. Yes, sir.

Q. Eight hours a day?

A. Yes, sir.

492 Q. Six days a week?

A. No, sir; five days a week.

Q. Eight hours a day for five days a week?

A. Yes.

Q. And is that all you worked during the week?

A. Yes.

Q. That is forty hours a week?

A. Yes.

Q. Were you wrong when you said forty-eight?

A. Yes, sir.

Q. Do you remember what your pay would be—how much did you get—what were your checks?

A. I made seventeen dollars and fifty cents a week.

Q. Now, did you join any Union after you started working for the Electric Vacuum Cleaner Company?

A. Yes, sir.

Q. What Union did you join?

A. The American Federation of Labor.

Q. How long after you had been working there?

A. About a week and a half after I had been working there.

Q. And somebody asked you to join the Union?

A. Yes, sir.

Q. What did they tell you?

A. They come around with the card and they gave it to me, and I asked them if I had to join the Union, and
493 they said, "Well, everybody else is."

Q. Do you know about that sit-down strike?

A. Yes, sir.

Q. You know there was a sit-down strike?

A. Yes, sir.

Q. That was Thursday, March 18th?

A. Yes, sir.

Q. How late did you work that day?

A. We worked up until three o'clock.

Q. Was that the normal end of the working day, or was that a little earlier?

A. That was about the end. We got on the floor and we worked up until three and everybody sat down.

Q. In other words, you quit working a little earlier because of the strike?

A. Yes, sir.

Q. Did you come back Friday?

A. Yes, sir.

Q. Did you work Friday?

A. No, sir.

Q. What was the reason for that?

A. We still had the strike.

Q. The same reason?

A. Yes, sir.

Q. Did you ever join the C. I. O.?

494 A. Yes, sir.

Q. When was that?

A. That was on Friday.

Q. The last day, Friday, March 19th?

A. Yes, sir.

Q. Where did you join it—in the plant?

A. In the plant.

Q. Somebody gave you a card?

A. Yes, sir.

Q. Now, did you read the newspaper notices about the

closing of the plant and then the opening of the plant?

A. No, sir.

Q. When did you first try to get your job back?

A. It was on a Wednesday.

Q. The Wednesday after the plant opened?

A. Yes, sir.

Q. That would be April 7th?

A. Yes, sir.

Q. You didn't go down to the plant Monday, April 5th?

A. No, sir.

Q. Why not?

A. Well, I thought there wouldn't be no need. We went over there one morning and it was closed down, and I didn't think it was open.

Q. Beg pardon?

495 A. I said I didn't think there would be any need to go over. I didn't hear about it re-opening.

Q. You didn't hear about the plant re-opening April 5th?

A. No.

Q. You went down April 7th?

A. Yes.

Q. What did you do?

A. I tried to get in and they told me I couldn't get in without an American Federation of Labor card. I asked them where I had to go to get one. They told me 1000 Walnut Street, so I went down and got my card and went back Thursday.

Q. April 8th?

A. Yes. I got in all right and the boss told me they didn't have no room for me, and I should go home.

Q. Who was your boss?

A. Carson.

Q. Carson?

A. Yes.

Q. What else was said to you, if anything?

A. He said he would call me in a couple of weeks.

Q. Did he ever call you?

A. No, sir.

Q. You are still waiting?

A. Yes.

Mr. Lodish: That is all.

496 Trial Examiner Ringer: Any further questions?

Mr. Carey: No questions.

Trial Examiner Ringer: Respondent?

Cross-examination

Q. (By Mr. Orgill) You say that at the time you signed to become a member of the American Federation of Labor you were told that all of the employees were required to do that; is that right?

A. Yes, sir.

Mr. Orgill: That is all.

Trial Examiner Ringer: No questions?

Mr. Lodish: May I hear that last question and answer?

(Last question and answer read by the Reporter.)

Redirect Examination

Q. (By Mr. Lodish) Do you know what "required" means?

Mr. Woodle: I object.

Mr. Lodish: Mr. Examiner, that did not state the testimony and the witness said yes.

Mr. Woodle: If the Court please, I object.

Trial Examiner Ringer: This is not cross-examination. This is clearing up something. Objection overruled.

Q. (By Mr. Lodish) What does "required" mean?

A. It means "demanding," I guess. I don't know.

Q. I think you answered it all right. What did you answer?

A. Yes.

497 Mr. Lodish: Read her answer.

(Witness's answer read as follows: "It means demanding, I guess. I don't know.")

Q. (By Mr. Lodish) Anyhow, you just answered Mr. Orgill that you were told all employees had to join the Union. Who told you that?

A. I don't remember his name.

Q. What did he say to you?

A. He come around with a union card and said, "Sign

this." I said, "Do I have to join the Union?" He said "Everybody else has."

Q. He said, "Everybody else has"?

A. Yes.

Q. Was that the whole conversation?

A. Yes, sir.

Q. That is what you said and that is what he said

A. Yes.

Mr. Lodish: That is all.

Trial Examiner Ringer: That is all.

(William Behrse takes the stand.)

Trial Examiner Ringer: Have you been sworn?

Mr. Behrse: No.

(William Behrse sworn by Trial Examiner Ringer.)

WILLIAM BEHRSE, called as a witness for the National Labor Relations Board, being first duly sworn, 498 testified as follows:

Direct Examination

Q. (By Mr. Lodish) Will you state your full name and address, please?

A. My name: William Behrse.

Q. What is that name?

A. William Behrse.

Q. How do you spell it?

A. B-e-h-r-s-e.

Q. What is your address?

A. 13806 Maplerow Avenue, Garfield Heights.

Q. What is that street?

A. Maplerow Avenue.

Q. Are you working now, Mr. Behrse?

A. Yes, sir, I are.

Q. How long have you been working at your present job?

A. Not quite two weeks yet.

Q. Not quite two weeks?

A. No.

Q. You started about the beginning of June. Do you remember the day you started, what day of the week?

A. Well, it will be two weeks ago next Friday I started in that place.

Q. Friday would be the 18th. You started June 4th?

A. Something like that.

499 Q. Do you know whether that is a permanent or a temporary job?

A. I don't know. I was told good for about ten months a year.

Q. Do you know whether—well, let me ask you this: Are you accepting that as a permanent job, or do you know whether you want your old job back yet?

A. I would be glad to get my old job back if I could.

Q. The old one is a better one than this one?

A. I worked there so many years and I have got seniority rights and this one I am a new employee.

Q. How long did you work for the Electric Vacuum Cleaner Company?

A. I started there April 2nd, 1925.

Q. You worked there twelve years?

A. Twelve years.

Q. What was your job there?

A. Polisher.

Q. How much were you getting an hour?

A. A dollar and five cents.

Q. A dollar and five cents an hour?

A. Yes.

Q. Forty hours a week?

A. Forty hours a week; sometimes less.

500 Q. So you know how much money you have earned since you have been out of the Electric Vacuum Cleaner Company altogether?

A. One hundred and seventy-three dollars.

Q. One hundred and how much?

A. One hundred and seventy-three dollars.

Q. One hundred and seventy-three dollars. Is that all you have made from any source whatsoever?

A. Yes, sir.

Q. Do you have any money coming to you that you have

earned that has not been paid to you yet?

A. The place I am working now, my next pay, but I included that.

Q. Now, you say you were a polisher?

A. Yes.

Q. About how many polishers were there at the Electric Vacuum Cleaner Company when you were there—how large was the department?

A. The actual polishers and buffers, I counted that I knew, was eighty-seven.

Q. Eighty-seven, including yourself?

A. Yes.

Q. When was the first time you belonged to a Union?

A. I joined the American Federation of Labor Polishers' Union in 1906.

Q. 1906?

A. Yes.

501 Q. That was over thirty years ago?

A. Yes.

Q. And did you remain a member of the American Federation of Labor all through the years?

A. All through those years, outside of nine months in the depression year, I guess it was 1933, I was out for nine months.

Q. Outside of nine months in 1933, you have been a member of the American Federation of Labor Polishers for thirty years?

A. Yes, sir.

Q. And did you stay a member of the American Federation of Labor Union during your period at the Electric Vacuum Cleaner Company?

A. Yes, sir.

Q. Now, did you ever join any other union?

A. No, sir; not up to that time, up to March.

Q. I mean up to today, did you ever join another Union?

A. Yes, sir.

Q. What Union did you join?

A. The United Electrical and Radio Workers of America Union.

Q. When did you join that?

A. I can't recall the date, but they had a meeting at Arnold Hall in the shut-down period.

Q. While the plant was closed between March
502 19th and April 5th?

A. Yes.

Q. What day of the week was that?

A. That was the second week. In the closing week that I joined.

Q. What day was it? Wednesday, Thursday, do you know?

A. I don't know.

Q. But it was the second week?

A. Second week.

Q. And the plant closed on March 19th?

A. Yes.

Q. And it was the next, the following week some time?

A. No, week after that.

Q. The 19th was on Friday?

A. That first week the shut-down was, I didn't join, although many other fellows, polishers, joined already, and the second week I joined.

Q. You joined in Arnold's Hall?

A. Yes, sir.

Q. Was there a meeting there of this group?

A. There was a meeting there that day.

Q. A large meeting?

A. I judge about five or six hundred.

Q. What did you do at that meeting with reference to joining it? Did you sign something?

503 A. Well, I signed an application card.

Q. Did you try to do anything about your American Federation of Labor membership?

A. Well, I saw some fellows there and they was signed up. Mostly they was signed up already.

Q. I don't mean that. You were a member of the American Federation of Labor?

A. Yes.

Q. Did you do anything about that?

A. About what?

Q. About your American Federation of Labor membership when you joined the C. I. O.?

A. At that meeting it was asked that we put in resignation to the A. F. of L., so I did.

Q. Did somebody call your name off?

A. Yes, sir.

Q. And you answered?

A. Yes, sir.

Q. Now, I want to get back to the last week that you worked. Do you remember Thursday, March 18th, the day before the plant closed, the day of the sit-down strike?

A. Yes, sir.

Q. Have you got that day in mind?

Q. What time did you go to work that morning?

504 A. Thursday morning, on the regular starting time, seven o'clock.

Q. Did anything happen that morning with reference to Union activities? Did you have any meetings? Did you talk to anybody? Did anybody talk to you?

A. Our business agent came around.

Q. What is his name?

A. Ray Muehlhoffer.

Q. Muehlhoffer came around?

A. Yes.

Q. About what time?

A. About ten o'clock in the morning I should say.

Q. Came where?

A. In the Polishing Room.

Q. In your department?

A. Yes.

Q. All right. What did he do?

A. He told us that the Machine Shop joining C. I. O. and they are sitting down.

Q. Yes?

A. And what we intend to do. I didn't express opinion, but there was one of the committee men said, "We will fight them."

Q. One of the committee men said, "We will fight them"?

A. Yes.

505 Q. Who was it said that?
A. Rinehart.
Q. Rinehart said that?
A. Yes.
Q. All right. What else happened?
A. Then he proposed that the polishers call a strike.
Q. Who proposed?
A. Muehlhoffer did.
Q. Muehlhoffer suggested a strike?
A. Yes.
Q. Then what happened?
A. And there was no action taken. Then he went in the office.
Q. Who went to the office?
A. Muehlhoffer did. Edwin Rinehart, and Newman.
Q. Who is Newman?
A. He was Chairman of the committee.
Q. Chairman of your committee?
A. Yes.
Q. Is he a polisher that works in the plant?
A. Yes, sir.
Q. So Rinehart, Muehlhoffer, and Newman went to the office?
A. Yes.
Q. Did you go with them?
A. No; they wouldn't take me with them.
506 Q. They wouldn't take you?
A. No.
Q. Did you want to go?
A. I just didn't ask them.
Q. Oh, you didn't ask them?
A. No.
Q. Were you on the committee?
A. Yes, sir.
Q. You were a representative of the polishers group in the American Federation of Labor?
A. Yes.
Q. Then they went to the office without you?
A. Yes.
Q. Did they come back?

A. They did.

Q. How soon after?

A. I can't recall that.

Q. An hour or a few minutes?

A. Something like that, about an hour or so.

Q. About an hour?

A. Yes.

Q. Then what happened? What was said?

A. Bert Newman told me, the Chairman of the committee, I didn't speak with Muehlhoffer and Rinehart, and I asked him what was said in the office.

507 Q. What was that?

A. I asked Newman what was said in the office.

Q. You asked Newman what was said in the office?

A. Yes.

Q. What did he say?

A. And he said they proposed to strike.

Q. They proposed to strike?

A. In the office, yes, but they said Mr. Wilson tell them is nothing serious about it. But wait a minute, I am getting ahead of my story. They was not sitting down yet when that took place.

Mr. Wachtel: I don't hear, your Honor. I would like to hear that last answer read.

Mr. Lodish: I will have it read for you. Just a minute. Will you please read that answer, Mr. Reporter?

Trial Examiner Ringer: Read his answer.

(Last answer read by the Reporter.)

Q. (By Mr. Lodish) I think I understand you. You corrected yourself. In other words, this was Thursday morning and the sit-down was not until Thursday night; is that right?

A. Yes.

Q. Now, you are straight?

A. Yes.

Mr. Orgill: If the Court please, we would like to have stricken out all that he claims was told him by Newman.

508 Trial Examiner Ringer: That will be overruled. He has shown that he has changed the time of it.

(Discussion off the record.)

Q. (By Mr. Lodish) Now, you said that when they came down from the office you asked the Chairman of the committee what was said?

A. Yes.

Q. And you yourself are a member of the committee?

A. Yes, sir.

Q. And then he answered you?

A. Yes.

Q. Tell us what he said? You were interrupted.

A. First, Newman told me that they proposed to strike, n office.

Q. Who proposed?

A. The Committee and business agent.

Q. Yes?

A. And that Mr. Wilson told them that it was not ecessary, that it was not nothing serious about it, but e was going to make them join the American Federation f Labor Union, and if they don't he would fire one or wo so the rest of them will join. That is as much as was aid.

Q. Have you told us all that happened that morning?

A. That is about all.

Q. And then the sit-down strike occurred Thursday night?

09 A. Over night.

Q. Were you in over night?

A. No.

Q. You had nothing to do with the sit-down?

A. When we quit at quitting time, we walked through he Machine Shop and then I saw they was standing idle.

Q. Did you come back Friday morning?

A. Yes, sir.

Q. Did you have any other conversations of this type riday morning?

A. No.

Q. Did anybody talk to you, or did you talk to anybdy?

A. Yes. We went to work when everybody was starting out, and the busines agent come in the Polishing Room

again.

Q. Who was that?

A. Ray Muehlhoffer.

Q. Same man?

A. Yes.

Q. All right.

A. And he says that he was suggested that he—

Q. You are telling me what Mr. Muehlhoffer told to you?

A. Yes.

Q. Who else was there?

A. Bert Newman was with me and another polisher. Three of us.

510 Q. So that when Muehlhoffer said that to you, Bert Newman and somebody else was with you?

A. Yes.

Q. And said it to the three of you or you alone?

A. To the three of us.

Q. Tell us what he said?

A. He said that Lenahan asked him to throw the polishers at the sit-downers and throw them out of the shop.

Q. To throw the sit-downers out of the shop?

A. Yes.

Q. Throw who out of the shop?

A. The ones sitting down in the Machine Shop.

Q. Then what else was said? What happened?

A. There was no action taken on that, then he says, "Wait a minute." I guess he went to the front of us. I don't know where he went to, but when he came back he told us to go home.

Q. He left you and came back and told you to go home?

A. Yes.

Q. Did you go home?

A. Yes.

Q. This was Friday?

A. Yes.

Q. And that was the last day you were in the plant?

A. The last day I was in the place.

Q. I understood you to say that you helped sign up

511 some of polishers for the C. I. O.?

A. I did.

Q. Now, there were eighty-seven polishers?

A. Yes.

Q. Were all eighty-seven polishers members of the American Federation of Labor?

A. To my knowledge, yes.

Q. They all were?

A. Yes.

Q. Including you?

A. Yes.

Q. Do you know how many polishers signed up for the C. I. O.?

A. About sixty-five, to my knowledge.

Q. How do you know that?

A. A list was given to me.

Mr. Lodish: I see. That is all.

Mr. Carey: No questions.

Cross-examination

Q. (By Mr. Wachtel) Just a few questions, Mr. Examiner, Mr. Behrse, you have been a member of the National Association of Metal Polishers for thirty years; is that right?

A. Yes, sir.

Q. When did you last pay your dues in the organization?

A. In December.

Q. In December?

512 A. Yes.

Q. Of 1936?

A. Yes, sir.

Q. Now, all the time that you have worked there, you knew, didn't you, that no one could work in the Polishing Department as a polisher unless he carried a Polisher's Union card?

A. I didn't know that; no.

Q. You knew that no one worked there that didn't carry a Polisher's card?

A. Any man starting in the Polishers Department, if he didn't have a card, the committee asked him if he

wanted to join.

Q. The fact is that there were eight-seven men in your department; is that right?

A. Yes.

Q. And every one carried a card?

A. To my knowledge, yes.

Q. In the course of the membership you had in the Polishers' Union for thirty years, did you ever at any time in that period know that a committee couldn't call a strike?

A. The committee couldn't call a strike?

Q. That is right.

A. I don't know.

Q. Did you ever know that a committee did call a strike, a committee of the Polishers' Union?

513 A. There was an attempt made once, but I stopped it.

Q. Was there ever a strike called by the Committee of the Polishers' Union, by a committee only?

A. Not as I know of.

Q. You know the rules of your Union, don't you?

A. Yes, sir.

Q. Have you got your book of the Polishers?

A. I haven't got it with me.

Q. Have you got it at home?

A. I have got it at home.

Mr. Wachtel: We would like the witness required to bring his Union book in with him.

Trial Examiner Ringer: You will do that; won't you?

Mr. Lodish: Mr. Examiner, may I ask a question?

Trial Examiner Ringer: Yes.

Mr. Lodish: This man is working. He is one of the few men who have got a job. To ask him to bring his book in is perfectly all right with me. I would like to know the purpose of it. He said he has paid dues until December. Is there any question about it?

(Discussion off record.)

Mr. Gordon: The fact of the matter is that I was present when, I believe it was a couple days before the opening of the plant, that Mr. Behrse here paid two

months dues to Mr. Muehlhoffer, because I know
514 there was a group of men, he called them aside and paid two months dues.

Trial Examiner Ringer: You will bring your book back this afternoon then?

The Witness?. I have got to go to work. I have asked permission to be out so much. I have got to go to work.

Mr. Carey: Couldn't the records of the Union show that testimony and have the Union bring in the record rather than have the man jeopardize his work?

Mr. Wachtel: If the Court please, this is cross-examination. We have a right to test the veracity of the witness. The man is not telling the complete truth in this matter.

Trial Examiner Ringer: Of course, you have a right to have that book and use it on cross-examination and I won't deny anybody that right.

The Witness: There was a remark made that I didn't pay any dues when I was out in the street. Can I answer that?

Mr. Lodish: Yes. Go ahead.

The Witness: Answering that question by Mr. Gordon that I paid two months dues while I was out in the street. While this rule was still on, there was an understanding, a peace supposed to be obeyed between the American Federation of Labor and the C. I. O., and we were told that to go back to work we have to pay the American Federation of Labor, so I went down and paid two months dues to the business agent. That is about
515 three or four weeks ago now. We were told that: "He owes me four dollars; he has got to return to to me," that "He took four dollars off of me." And the Financial Secretary refused to accept that money.

Redirect Examination

Q. (By Mr. Lodish) When did you pay the two months dues? What date was that? Was it while the plant was closed this year between March 19th and April 5th?

A. I still got them really home.

Q. Will your book show that you paid those two

months dues?

A. No.

Q. There is nothing on your book to show it?

A. No.

Mr. Lodish: I would like to have this man send the book in with somebody else.

Trial Examiner Ringer: That is what I was going to suggest. Can't you send that book in to Mr. Lodish by some other person? Then if you should have to be called in, we can get you in afterwards and possibly save you from making a trip down here.

Mr. Lodish: I forgot to ask this man a few questions. I would like to continue the examination.

Trial Examiner Ringer: All right.

Q. (By Mr. Lodish) Now, after March 19th, did you make any effort to get back to work?

A. I did.

516 Q. What did you do?

A. I went down to the business agent and I signed a card over there.

Q. What date was that?

A. The first part of April. I don't recall exactly the date.

Q. The first part of April?

A. Yes.

Q. About how long after the plant opened?

A. The following week.

Q. And you say you signed a card?

A. Yes.

Q. Did you get a clearance card? Did you get a card to go in the plant?

A. I signed an application card join A. F. of L. Everybody signed it.

Q. All right. Did you get some kind of card to take to the plant?

A. Yes.

Q. Did you go to the plant?

A. I went, and the committee came out and talked with me.

Q. What committee?

A. Only one. Mr. Rinehart came out to the gate.

Q. When was this?

A. That was the very same day I signed the card.

Q. You know the plant opened April 5th, Monday?

517 A. Yes.

Q. How long after that was this?

A. About a week after that.

Q. The next Monday, April 12th?

A. Tuesday it was.

Q. April 13th?

A. Yes.

Q. What was the conversation between you and Rinehart?

A. He told me first that my place was taken by somebody else, then he told me if I would go in that room, the others wouldn't work with me. I asked him why, and he said he didn't know. He said, "Anyway, you are getting enough money from the C. I. O." Why should I work?

Q. He said that you were getting enough money from the C. I. O. and why should you work?

A. Yes.

Q. Anything else?

A. Then after that I gave up and I went around and looked for a job. I told where I came from. The next time I was told the job was full, so I called up Johnny Tuteur, the assistant to the President. I told him I want to talk to him.

Q. Johnny Toth?

A. Johnny Tuteur. I went down and talked to him and told him I went into that place as a man and want

518 to go out as a man. If I can't work in this place, I want to work some place else. He told me nobody is being blacklisted at this place, and I told him it looks to me that way. Then he told me he is going to talk with Mr. Tuteur and he told me Rinehart is going to be put back to work and he is going to let me know.

Q. By the way, did anybody tell you to pay your dues for those two months?

A. With the understanding that we are to join the

American Federation of Labor to go back to work, that is why I paid.

Q. Did anybody tell you to pay the dues?

A. No.

Q. Nobody told you?

A. As much as was announced at the meeting.

Q. You were told at the C. I. O. meeting?

A. Yes; to join the A. F. of L. and go back to work.

Mr. Lodish: That is all.

Cross-examination

Q. (By Mr. Orgill) When was that?

A. When?

Q. Yes.

A. That was—when was that plant opened?

Q. April 5th.

A. That was Thursday morning.

Q. Tuesday morning?

A. Thursday morning.

519 Q. That would be the 6th. It was the day after the plant opened?

A. No; the plant opened, that was on Thursday morning.

Q. Thursday?

A. That meeting took place.

Q. After the plant opened?

A. Yes.

Mr. Lodish: Will you please read those questions and answers?

(All questions and answers on cross-examination of William Behrse by Mr. Orgill read by the Reporter.)

Trial Examiner Ringer: You mean April 8th then, don't you?

The Witness: Monday was the 5th and it was on Thursday. It must be 8th.

Trial Examiner Ringer: The Thursday after the Monday the plant opened?

The Witness: Yes; that was the meeting we were told to go back to work and join the A. F. of L.

Mr. Orgill: That is all.

Trial Examiner Ringer: That will be all. We will have a few minutes recess at this time.

(Recess.)

Cross-examination

Q. (By Mr. Spring) Mr. Behrse, since 1926 you
520 worked in the Polishing Department for the Electric Vactuum Cleaner Company; is that true?

A. Since 1925; yes, sir.

Q. Since 1925?

A. Yes.

Q. And from 1925 to 1937, as far as the polishers are concerned, it was a closed shop?

A. Not all that period, no.

Q. Well, for how long was it a closed shop during that period?

A. There was hardly any in the Union in 1932 and 1933.

Q. Well, in 1934, was every employee in the Polishing Department affiliated with a craft that was likewise affiliated with the American Federation of Labor?

A. Yes, but it was not a closed shop. No agreement at all in 1934.

Q. In 1934 every polisher belonged to the particular union affiliated with the American Federation of Labor; is that true?

A. I can't say for sure whether everyone was in the Union or not, but my understanding they were.

Q. And you solicited yourself most of the new polishers that were employed, to join the Union; is that true?

A. The committee went up.

Q. And all during this time you were on the committee?

521 A. Yes, sir.

Q. Now in 1935, your committee was one of the committees that insisted, with the employer, that all new employees in the Polishing Department must be members of your Union; is that true?

A. I don't recall that.

Q. Now, is it a fact, Mr. Behrse, that it was your committee that insisted upon that agreement with the Company?

A. I never talked to the management about no agreements.

Q. I am talking about your own committee. Didn't your own committee decide that every polisher must belong to the Union?

A. All that I recall, I was Chairman when the place was first organized and went into office, and I asked Mr. Tuteur to recognize our Union.

Q. You asked Mr. Tuteur to recognize your Union?

A. Yes.

Q. Didn't you go farther in your committee and try to induce the employer to agree to a proposition whereby only Union members should be employed?

A. I never been a part of that.

Q. I see. Did you ever resign from the American Federation of Labor?

A. At that meeting I was talking previous.

Q. I see. In that meeting, did you ever notify
522 the American Federation of Laber that you had resigned as an individual?

A. I didn't.

Q. You did not?

A. No.

Q. In a meeting, as I understand it, the list was called of the members present and they were asked if they desired to resign?

A. Yes, sir; that is true.

Q. Then about the time of this meeting you referred to, you were employed by the C. I. O., were you not, to solicit members of the Electric Vacuum Cleaner Company plant?

A. I beg pardon? Members solicited by the C. I. O., I done that before I talked to any of them.

Q. I see.

A. If I can express myself, I was called up many times by polishers who asked me to sign them up with the C. I. O.

Q. Now, how many polishers did you get to sign the

C. I. O. card?

A. About five or six.

Q. Were you paid any compensation by the C. I. O. for your services?

A. No, sir.

Q. You saw a notice in the newspaper; didn't you, Mr. Behrse, that the plant would re-open on April 5th? You knew the plant was to re-open on April 5th; is that true?

523 A. Yes, sir.

Q. And at that time you had told the company you had resigned from the American Federation of Labor; had you?

A. Not as an individual.

Q. And that advertisement in the newspaper provided that all American Federation of Labor employees would be taken back to work?

A. Yes.

Q. That is true; isn't it?

A. I saw that, yes.

Q. But you didn't endeavor to go back to work until Thursday after the date of the call back to work; is that right?

A. Well, I—

Q. You didn't appear at the plant on the Monday it opened?

A. I didn't dare to go to the plant.

Q. Whether you dared or not, you didn't go back to get your job on Monday?

A. I didn't fight for my job. If I had to fight, I wouldn't do it.

Q. Were you there?

A. Yes.

Q. Were you there on Tuesday?

A. I was there.

Q. Most employees went back on Monday and Tuesday?

524 A. Not as I know.

Q. You were there?

A. I was there. They were all out on the street.

Q. And all of those affiliated with the American Federation of Labor had gone back to work; hadn't they? Either on Monday or Tuesday?

A. I judge on one of those two days.

Q. What I am trying to get at, you didn't go to the plant and try to get your job until Thursday after the plant opened?

A. (No answer.)

Q. Now just one more question: When your foreman in your department needed additional employees, he always called the Union; didn't he, to furnish the company with employees?

A. Not as I know of. Sometimes he asked the polishers working in that place, and sometimes he calls up the Union. They have a different understanding between themselves that I know of.

Q. Do I understand you, Mr. Behrse, from your previous testimony, that you endeavored to resign from the American Federation of Labor, then after you resigned from the American Federation of Labor you joined the C. I. O. and after you had joined the C. I. O., at the expiration of a few days you resigned from the C. I. O.; is that true?

A. Not as an individual I didn't.

Q. You didn't resign from the C. I. O. then?

525 A. No; I stated in my previous statement that the C. I. O. meeting, all those had a meeting, their members to go back to work and join the American Federation of Labor.

Q. All right. And after that meeting, did you join the American Federation of Labor again?

A. No.

Q. After your C. I. O. meeting, someone suggested then that the employees go to work; didn't they?

A. (No answer.)

Q. Now, did they tell them at that meeting to rejoin with the American Federation of Labor—they did; didn't they?

A. Yes. They told that.

Q. Did you rejoin the American Federation of Labor?

A. I did.

Q. You are a member of the American Federation of Labor today?

A. Today?

Q. Yes.

A. I really don't know. I was told that four dollars, they will pay me for January and February. Whether that puts me a member or not, I don't know.

Q. I see. Just one question: All during 1934 it is true, isn't it, that every man in the Polishers Department belonged to a Union affiliated with the American Federation of Labor?

A. I can't say that. To my knowledge, I didn't
526 know we had a closed shop in the place until I read that notice to go back.

Mr. Spring: That is all.

Cross-examination

Q. (By Mr. Woodle) What do you understand by a closed shop when you say you didn't know there was a closed shop out there? What do you mean by a closed shop?

A. Everybody supposed to be members of that organization.

Q. That is right. Every member in that particular shop is supposed to belong to the Union; is that right? Isn't that what you mean by a closed shop?

A. Yes.

Q. Well, is it or isn't it?

Mr. Lodish: He said "yes."

A. That is what I understand.

Q. (By Mr. Woodle) Is there anything else involved in a closed shop besides that?

A. (No answer.)

Mr. Woodle: Will you please read the question, Mr. Reporter?

(Last question read by the Reporter.)

A. Besides being a member of that organization?

Q. (By Mr. Woodle) That is right.

Mr. Carey: Mr. Examiner, I object to the form of the

question.

527 Q. (By Mr. Woodle) Do you understand that there is anything else involved in the closed shop besides that? Put it that way.

Mr. Carey: Mr. Examiner, does counsel desire a yes or no answer?

Trial Examiner Ringer: I assume so.

Mr. Woodle: I don't care how he answers it. Let him answer the question.

Trial Examiner Ringer: Read the question to the witness.

(Last question read by the Reporter.)

A. I suppose a signed agreement.

Q. (By Mr. Woodle) When you say a signed agreement, you mean a written agreement?

Mr. Carey: I object to the form of the question—trying to confuse the witness.

Mr. Woodle: Withdraw that.

Q. (By Mr. Woodle) You were a member of the committee out there for how long, Mr. Behrse?

A. About three years?

Q. About three years?

A. Yes.

Q. Did you attend all the meetings of the committee?

A. Any time the committee was called to go in the shop.

Q. You attended the meeting?

A. Yes.

528 Q. Do you recall a meeting that was held in 1934 in which the method of employing polishers was discussed by the Committee? Do you remember such a meeting in which the Committee discussed the manner in which polishers were employed by the Electric Vacuum Cleaner Company?

Mr. Griff: I wish counsel would fix the time better than that.

Trial Examiner Ringer: I don't know just how the last question was on that. Just read that for me, will you?

(Last question read by the Reporter.)

Trial Examiner Ringer: That is fairly definitely fixed

1934.

Mr. Woodle: The fall of 1934.

A. I don't recall nothing specially.

Q. (By Mr. Woodle) Isn't it a fact, Mr. Behrse, that at one of these meetings of your committee you brought up yourself the question of the manner in which polishers were employed at the Electric Vacuum Cleaner Company and you made a protest to the committee regarding the manner in which employees were hired; do you recall making such a protest to the Committee?

A. No. Would you state me more plainly what was it so I can recall?

Q. Do you recall making a protest to the Committee regarding the fact that every polisher that was hired at the Electric Vacuum Cleaner Company had to re-
529 ceive the O. K. of Mr. Muelhoffer, who was the business agent for the Polishers' Union?

A. Mr. Muehlhoffer was the business agent.

Q. Do you recall making a protest to that effect?

A. Mr. Muehlhoffer was the business agent in 1934.

Q. Do you recall making a protest to the effect that every employer, every employee hired in the Polishers Department of the Electric Vacuum Cleaner Company at that time had to receive the O. K. of Mr. Muehlhoffer?

A. In what year was that?

Q. In 1934.

A. We didn't have a business agent in 1934.

Trial Examiner Ringer: That is answered. That necessarily answers your question.

Q. (By Mr. Woodle) You say you made no such protest?

A. Not in that year.

Q. When, if any time, did you make such a protest?

A. I never made a protest, but I brought up in a general talk, if a man goes around and looks for a job, if he finds a job and he has got a paid-up Union card and he is entitled to a job, you go to work that place. I told that time that, going down to a business agent to get a permit—I was a business agent myself at that time—it brings a racket in labor unions. I say at that time that a business

card was sufficient, and I didn't make any protest;
530 I just expressed my opinion.

Q. You expressed your opinion?

A. Yes, sir.

Q. Just as you told us now?

A. Yes, sir.

Q. Then you knew at that time that in order to be hired at that time in the Polishing Department of the Electric Vacuum Cleaner Company, it would be necessary to receive an O. K. from Mr. Muehlhoffer?

A. At this—

Q. Didn't you know that?

A. Then that was—

Q. Yes or no?

Mr. Carey: I object to the form of the question, Mr. Examiner.

Mr. Woodle: Read the question.

(Following question read by the Reporter: "Then you knew at that time that in order to be hired at that time in the Polishing Department of the Electric Vacuum Cleaner Company, it would be necessary to receive an O. K. from Mr. Muehlhoffer?")

Trial Examiner Ringer: Just answer that yes or no.

Q. (By Mr. Woodle) Answer that yes or not.

Mr. Lodish: I object, Mr. Examiner. He doesn't have to answer it in terms dictated by counsel.

531 Mr. Spring: That can be answered yes or no very plainly. If it can't, let him say so.

Trial Examiner Ringer: Answer that in your own way as best you can.

The Witness: I don't quite understand that question.

Mr. Woodle: Read that question again, please.

(Following question read by the Reporter: "Then you knew at that time that in order to be hired at that time in the Polishing Department of the Electric Vacuum Cleaner Company, it would be necessary to receive an O. K. from Mr. Muehlhoffer?")

A. First I found out about this was when Rinehart told me about it, and I told Rinehart I didn't like that. The Committee was not called together, proposed that or

nothing. That was done without my knowledge. I just was told by the one committee man.

Q. (By Mr. Woodle) You were told about that by one of the committee men—Mr. Rinehart?

A. Yes.

Q. When was that?

A. That was either late in 1936 or early in 1937. I don't recall.

Q. And your statement is now that you never knew about it until that time?

A. Yes, sir.

Q. When was it that you expressed your opinion
532 in the manner you were telling us about a few minutes ago? How long ago was that?

A. It was late 1936 or early 1937.

Q. You are positive about that?

A. Yes.

Q. And you are positive that the minutes of the Committee won't show to the contrary?

Mr. Lodish: I object unless he has seen the minutes.

Trial Examiner Ringer: Sustained.

Mr. Woodle: That is all.

Mr. Lodish: I have a few questions.

Trial Examiner Ringer: All right. Proceed, Mr. Lodish.

Redirect Examination

Q. (By Mr. Lodish) Mr. Behrse, I am a little bit confused about the last three years. You were a committee man among the polishers?

A. Yes.

Q. And you testified that as far as you knew, all of the polishers belonged to the American Federation of Labor even in 1934; is that right?

A. Yes, sir.

Q. Did you—by "you" I mean the polishers' group, of which you were a committee man—have any kind of agreement with the company in 1934?

A. No, sir.

533 Q. Did you have any kind of agreement in 1935?

A. We had agreement in 1935, after the strike was over. This agreement was adopted in Metal Trades Hall in a body.

Q. That agreement included polishers and other unions?

A. Yes, sir.

Q. And that is the agreement of June and July, 1935, that we already have in the record. You don't know about it, but I am telling you what is in the record. All right. Did you have any agreement that you knew about in 1935 besides that written agreement?

A. I don't know.

Q. Now, did you have any agreement in 1936?

A. The same agreement was renewed in 1936.

Q. Do you know whether there were any changes in the new agreement?

A. No.

Q. But as far as you know there was an agreement renewed in 1936?

A. Yes.

Q. Was that in writing?

A. In writing, yes.

Q. In a body of Metal Trades of four or five unions?

A. Five different unions.

Q. Now, at this time did you have, as far as you know, any other agreement besides that one?

534 A. I didn't, no.

Q. And was that the last agreement you knew about until the day you left?

A. Yes.

Q. Until the day you ceased work?

A. Yes.

Mr. Lodish: That is all.

Trial Examiner Ringer: Next witness.

(Joseph Macho takes the stand.)

Trial Examiner Ringer: Have you been sworn?

Mr. Macho: No.

(Mr. Macho sworn by Trial Examiner Ringer.)

Mr. Gordon: May I call your attention to the fact that this gentleman was sitting here in the room all morning.

The Witness: I beg your pardon?

Mr. Lodish: Weren't you in the room?

The Witness: Just about a minute ago.

Mr. Lodish: I think Mr. Lowrance just brought him in.

Trial Examiner Ringer: Did you just bring him in, Mr. Lowrance?

Mr. Lowrance: I just brought him in.

(Discussion off the record.)

Trial Examiner Ringer: There are not any other witnesses in here that have not been given permission to remain?

535 (No response.)

Trial Examiner Ringer: I mentioned several times before that I am expecting counsel to watch that to see that there is not any difficulty. There has not been the slightest difficulty up to this man. Proceed.

JOSEPH MACHO, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Lodish) Will you state your full name and address, please, Mr. Macho?

A. Joseph Macho, 5293 East 115th Street, Garfield Heights.

Q. Are you working now, Mr. Macho?

A. Yes.

Q. Do you have a permanent or a temporary job, do you know?

A. It is a temporary job. You can't tell how long it is going to last.

Q. Can you state whether you want your job back at the Electric Vacuum Cleaner Company if you can get it?

A. Well, it is according to the way a man would be treated out there.

Mr. Spring: That answer ought to go out I should think, your Honor.

Trial Examiner Ringer: I think it is responsive.

Q. (By Mr. Lodish) Assuming you get the same job you had before. What I am trying to bring out is:
536 If you have got a job now that has put you in a position where you don't want your old job back?

A. No, not exactly.

Q. You don't know for sure yet?

A. No.

Q. What was the last day you worked at the Electric Vacuum Cleaner Company?

A. March 19th.

Q. How much money have you earned or gotten by way of relief or through any other source since that day until the present?

A. I have that in my pocket here.

(Witness produces some papers.)

A. This here at the bottom (indicating). That is what I have got. Coming Friday down to Murray-Ohio.

(Discussion off record.)

Q. Now, is it a fact, Mr. Macho, that since your work ceased at the Electric Vacuum Cleaner Company, that you have earned ninety-three dollars and twenty-six cents at one place and thirty-one dollars and fifty-nine cents in another, received fifty dollars and forty cents by way of relief, and in addition to that, you have thirty dollars owing to you that you have earned but not yet received?

A. Yes.

Q. Making a total of two hundred and five dollars and twenty-five cents?

537 A. Yes.

Q. What were you earning at the Electric Vacuum Cleaner Company before your work ceased?

A. We were working at one dollar and five cents an hour rate and eight hours, averaged forty hours a week.

Q. A dollar and five cents an hour and forty hours a week?

A. Yes, sir.

Q. What was your job there?

A. Buffing.

Q. How long had you worked at the Electric Vacuum Cleaner Company?

A. Eighteen years.

Q. You had worked there eighteen years?

A. March 3rd. Going on nineteen March 3rd—no; February 24th.

Q. When did you first join a union and which one was it?

A. I belonged to the American Federation of Labor for thirty-two years, paid all my dues up clean, fine and dandy, and even helped swing it and everything else as much as I could possibly do.

Q. Thirty-two years?

A. Thirty-two years. Paid assessments, and when the hat come around, I even donated in the hat and everything else.

Mr. Spring: Do you want all that in, Mr. Examiner?

Trial Exaiminer Ringer: It is his answer.

538 Mr. Spring: I will ask that it go out as not responsive.

Trial Examiner Ringer: Oh, it is responsive, I think. Overruled.

Q. (By Mr. Lodish) When was the last payment you made to the American Federation of labor in dues, do you remember?

A. December.

Q. December, 1936?

A. 1936.

Q. And your payment then was to carry you until how long?

A. Well, until March. They always carry you over for a month and they notify you.

Q. That is, you are allowed to be in default for a month or so?

A. Yes.

Q. And the dues that you paid, paid up until what day? Until March 1st?

A. No; until the ending of March.

Q. Until April 1st?

A. Yes.

Q. So as far as you are concerned, you were paid up to April 1st?

A. Paid up.

Q. And figured you were allowed default until May 1st?

A. Yes.

Q. Did you ever join any other union?

539 A. No; not until this here come with the C. I. O., after we had these scrimmages out here, March 19th, and when I saw the biggest part of them belonging to the C. I. O., I thought I had a good reason to join them just as well.

Q. When did you join the C. I. O.?

A. That was previous to the two weeks we was off.

Q. You mean what?

A. Between March 19th and—

Q. 25th?

A. —and 23rd, something like that, between those two weeks. I can't just remember.

Q. How did you join the C. I. O.?

A. Through the responsibility of the biggest part of them joining it.

Mr. Orgill: May a I ask that that go out?

Trial Examiner Ringer: It may go out. It is not responsive.

Q. (By Mr. Lodish) What did you do to join? Where did you join? Where did you personally join the C. I. O.—in the plant?

A. No; in Arnold's Hall.

Q. At a meeting?

A. Yes.

Q. You can't remember the exact day?

A. No.

540 Q. Do you remember the day of the week?

A. I believe it was on Thursday.

Q. Did you sign a card at that meeting?

A. Yes.

Q. Did anybody ask you whether you wanted to resign from the American Federation of Labor at that meeting?

A. No, sir.

Q. Do you remember about how many people were there at that meeting that you signed the card?

A. The place was just crowded. There must have been over five hundred of them, I guess. They was all standing in the rear and even on the street.

Q. Now, as a buffer, is that the same as a polisher?

A. Yes; that is in the same department.

Q. So that you were working in the same department with Mr. Behrse?

A. Yes.

Q. And is it a fact that there are about eighty-seven polishers?

A. Something like that. I don't know how many they have there now.

Q. At the time you were there?

A. At the time—I think it was eighty-three, if I am not mistaken, eighty-three or eighty-seven.

Q. Do you know how many joined the C. I. O.?

541 A. About sixty-eight.

Q. Now, did you make any effort to get back to your job?

A. Yes.

Q. What did you do about that?

A. Why, I went down to the Moose Hall and I went down to see Brother Rinehart, Financial Secretary, and asked him about a card to go back to work.

Q. What was the date of that, Mr. Macho? Do you remember?

A. Well, that was on a Saturday, a week following after they had started. I was told to go down and see him. I don't remember just the date.

Q. The plant opened on April 5th?

A. It was on a Saturday following.

Q. Did you say you were told to go down on that Saturday?

A. Yes.

Q. That is April 10th?

A. Yes.

Q. Where were you told and by whom?

A. By a group of men that was going down there.

Q. Was this at a meeting, or did some fellow tell you?

A. No; this was on the outside.

Q. Some people told you to go down?

A. We were told we couldn't go to work unless we went down to get our card.

Q. And you went down that same Saturday?

542 A. Yes.

Q. And what happened?

A. Well, we got down there and he called me in. He had a little office there. About seven or eight of the boys was in there and they only called one in at a time.

Q. Who did the calling?

A. We rapped at the door, and when one got out another one went in.

Q. Who called you in? Who was it of the American Federation of Labor officials?

A. Mr. Rinehart.

Q. So that you went in one at a time?

A. Yes.

Q. Now, just tell us the conversation while you were there with Mr. Rinehart? What was said and done?

A. When I got in there I asked for a card and he said to me, "Well, Joe," he says, "the only thing we can do with you," he says, "if you want your job back," he says, "you will have to sign your seniority rights away," he says, "but now at the present time I ain't got no opening for you," he says, "but you will be back to work." So then I wanted to pay my dues to keep me in good standing. Mr. Rinehart says, "No; we ain't accepting any dues. You ain't going to be suspended and you can pay up when you get back to work." I am still getting back to work.

543 Q. Did you make any other efforts?

A. Yes. I went down to see Ray Muehlhoffer down to Verdon Brass and I saw Rinehart down there and I saw Rinehart down to the shop twice personally to make an agreement, and where I was to go to work, and he told me, he says, "Joe," he says, "there ain't no job for you," he says. "You made your bed, now lay in it."

Q. About how many times altogether did you make an effort to get a card?

A. Why, I was down to see Ray down at the Verdon Brass down there, whatever you call it—

Q. You have said that already. I just want to know how many efforts you made altogether with regard to American Federation of Labor officials to get a card. Was it four or five?

A. Three times each.

Q. Three times each. That is six?

A. Ray Muehlhoffer and Rinehart.

Q. You have answered that. Did you make any efforts with regard to the company? Did you go to the plant?

A. Yes; I went down to see Homer Schermerhorn.

Q. Homer Schermerhorn?

A. Yes.

Q. He is the foreman?

A. The polishing, Plate and Buffer Department.

544 Q. The foreman of your department?

A. Yes.

Q. Did you see him?

A. Yes.

Q. Talk to him?

A. Talked to him personally.

Q. Do you know when that was?

A. That is the time I approached him when I was sent down to see him. I can't remember the date, but it was about a week after. They wouldn't give me no card to go to work.

Q. About a week after the 10th?

A. Yes; that would be about the 17th or something like that.

Q. What was the conversation with Schermerhorn?

A. I went down and spoke to him, and he said, "Joe, I can't do nothing for you at all. It is up to the American Federation of Labor committee to do what they can do." He said, "I ain't got no voice in this factory at all."

Q. Is that the whole conversation?

A. That was about all, and then the whistle blew for dinner and, of course, he got excited and he ran out for dinner.

Mr. Lodish: That is all.

Trial Examiner Ringer: Anything additional?

Testimony of Joseph Macho

Direct Examination

Q. (By Mr. Carey) Mr. Macho, how long have you stated you worked for the Electric Vacuum Cleaner Company?

545 A. Eighteen years.

Q. In your experience and to the best of your knowledge—

A. Yes.

Q. —do you ever recall the company giving the use of their offices to Union organizers for the purpose of securing membership?

A. No; not to my knowledge.

Q. Were you employed by the Electric Vacuum Cleaner Company at the time of the MESA strike in 1935?

Mr. Spring: I object to that as immaterial to this situation here.

Trial Examiner Ringer: Overruled.

Mr. Spring: Exception.

The Witness: I didn't get that question.

Trial Examiner Ringer: Read it.

(Last question read by Reporter.)

A. We was forced back in at that strike.

Trial Examiner Ringer: Were you employed by the company at that time? That is what the question is now.

The Witness: Oh yes, sure.

Trial Examiner Ringer: Go ahead.

Q. (By Mr. Carey) To the best of your knowledge, other than in the Polishing Department, what organization did those workers belong to?

A. What—in the Polishing Department?

546 Q. No; other than the Polishing Department?

A. Well, there was no organization whatever in the other departments. Not to my knowledge, outside of a few of them that had been forced into it.

Mr. Spring: I object to that.

Trial Examiner Ringer: Let that last part go out, the "except" part.

Q. (By Mr. Carey) At the time of the strike in 1935, what were your instructions from your union?

A. The instructions was from the union to go to work and break the line of the MESA, to break up that strike.

Q. To the best of your knowledge, the other workers other than the Polishers Department, were members of the MESA Union?

Mr. Spring: I object.

Mr. Wachtel: I object. He has already answered that before.

Trial Examiner Ringer: Overruled.

Mr. Spring: Exception to that. How does he know how many were members of the MESA?

The Witness: There was enough of them out there that could have broke that line if they had courage enough.

Mr. Carey: I object to that procedure.

Mr. Spring: Take it off the record then.

Trial Examiner Ringer: The last question by counsel and the answer may go out. Do you have anything to
547 ask for the respondents, Mr. Orgill?

Mr. Orgill: No.

Trial Examiner Ringer: Do you have any questions, Mr. Spring?

Mr. Spring: Yes, I would like to ask some questions.

Trial Examiner Ringer: Proceed.

Cross-examination

Q. (By Mr. Spring) On April 5th, Mr. Macho, the plant opened after it had been closed for a few days?

A. Yes. But in what condition?

Q. We don't care about the condition.

Trial Examiner Ringer: Just don't argue this matter. Just answer the questions.

Q. (By Mr. Spring) And you saw the notice in the paper, did you not, of the re-opening of the plant?

A. Yes.

Q. And you didn't try to go back to work until Saturday, after the Monday in which the plant had opened?

A. The reason I didn't—

Q. Not "reason"—did you?

Trial Examiner Ringer: Just answer the question.

A. No; I was not going to be clubbed on my head. I

have got four children and I am not going to be clubbed by nobody.

Trial Examiner Ringer: Let that go out. Now, Mr. Witness, this is a legal proceedings in which ques-
548 tions are asked you and you are supposed to answer different questions. If there are any explanations to be brought out, the attorneys who called you originally will ask you some further questions and bring that out. So you just answer questions that the lawyers ask you.

Q. (By Mr. Spring) Mr. Macho, you knew that the crafts affiliated with the American Federation of Labor had entered into a contract with the company in 1935 and it was renewed in 1936; you knew that, didn't you?

A. Renewed in 1936?

Q. In 1935, did you have knowledge of the contract that your particular craft—agreement entered into by your particular craft and the company?

A. There was not any particular agreement throughout the factory at all.

Q. You have no knowledge of what the terms of that agreement were, if there was one?

A. No.

Q. And you were a member of the Polishers' Union at that time?

A. Yes.

Q. You didn't know that the Polishers' Union had entered into a written contract with the company in 1935?

A. That didn't take in all the employees.

Q. I am talking about the Polishers' Union. Did
549 you know that your craft entered into a contract with the Union?

A. No.

Q. You didn't know that?

A. No.

Q. Did you know it in 1936?

A. 1936? No; I didn't know that they even had a contract then.

Q. You didn't know of any written contract at all?

A. No.

Mr. Spring: That is all.

Trial Examiner Ringer: Anything further?

Cross-examination

Q. (By Mr. Wachtel) You say you have been a member of the Polishers' Union for thirty years?

A. About thirty or thirty-two years.

Q. Thirty-two years?

A. Thirty-two years, I am quite sure.

Q. I presume in the course of those thirty-two years you attended most of the meetings?

A. Yes.

Q. You did?

A. Yes.

Q. And you learned, I suppose, the rules and regulations governing the membership in that Local?

A. No; not exactly. I never even got one of the
550 rules and regulations books. Never got one.

Q. Did you know about the rules and regulations?

A. No.

Q. You have no idea?

A. Outside of paying my dues.

Q. Outside of paying your dues?

A. Yes.

Q. Did you know that you or any one else in your Local, if you performed any activity that would disrupt your Local, that you would be liable for suspension by the International or your own Local?

A. I never done anything like that.

Q. I say did you—

A. I never disrupted nobody.

Q. I understand. Just answer my question. Did you know that rule?

Trial Examiner Ringer: He wants to know if you knew about that rule?

The Witness: Yes.

Q. (By Mr. Wachtel) You did know that rule?

A. Yes; I knew about that rule.

Q. Then you knew this rule: "Any meniber found guilty of any practice tending to disrupt the organization, or divulging any of its secrets to any but a member in good

standing shall, upon conviction, be fined, suspended,
551 or expelled, as the Local or International Executive Board may determine." I am reading to you from the International and Local Laws of the Metal Polishers, Buffers, Platers and Helpers International Union. You knew of that rule; did you not?

A. Yes.

Mr. Wachtel: That is all.

The Witness: That is the rule that they give you when you are initiated.

Redirect Examination

Q. (By Mr. Lodish) Were you ever suspended by the American Federation of Labor?

A. Well, during the depression there was no union out there.

Q. You mean during the depression?

A. There was no union out there.

Q. That was in what year?

A. I think that was 1934.

Q. 1933 or 1934. Whatever it was, since that time, have you ever been suspended by the American Federation of Labor?

A. No.

Q. Nobody ever told you you were suspended?

A. No.

Q. Did you go to the plant Monday, April 5th, the day it opened?

A. Yes.

Q. You did go to the plant, outside?

552 A. Yes, sir.

Mr. Lodish: That is all.

Recross-examination

Q. (By Mr. Spring) What do you mean by the plant? Did you go in the plant or just stand in the street? You say you went to the plant?

A. Sure, we went to the plant. Outside, not in. He didn't ask me if I was in the plant. He asked me if I was out.

Mr. Lodish: Mr. Examiner, if counsel for the Respondent insists on elaborating on that type of question, I will have to ask that certain things go in that I didn't want to. Now, you asked that this man's answer about his fear not go in. That is all right and within your discretion, and it was not particularly responsive, and maybe not material. However, this man is involved in an action in which he was involved for back pay. One of the issues is: Did he try to get the job back? It may be material. All I am interested in is: He did go to the plant and, for some reason or other, he could not get in. If you want to open it up, you can open it up.

(Discussion off record.)

Trial Examiner Ringer: I don't recall now exactly what question was gone into by Mr. Spring that you are referring to.

Mr. Lodish: He said this: You didn't try to get your job before May 10th?

Mr. Spring: I asked him if he made an effort.

553 Mr. Lodish: If it is going to make an issue in this case, that this man and other men did not make their best effort to get the job, I suppose we should find out why they didn't do what they should have done.

Trial Examiner Ringer: I think the record is clear on this as to why he didn't.

Mr. Wachtel: I have one question.

Trial Examiner Ringer: All right.

Recross-examination

Q. (By Mr. Wachtel) Did you say that you didn't know personally that you had any notice of suspension from your Local?

A. No.

Q. Then how do you account for the letter you wrote to the International, asking them if they heard of your suspension?

A. I didn't quite get you.

Q. Then how do you account for a fact that you wrote a signed letter asking them for a hearing on your suspension?

A. Wrote a letter?
Q. Yes.
A. For my suspension?
Q. Yes.
A. I didn't write no letter for my suspension.
Q. You didn't write any?
A. No.
Q. You are sure of that?
554 A. What do you mean? Wrote a letter to whom?
Q. To the International.
A. No.
Q. You are positive of that; aren't you?
A. Yes. I didn't write no letter.
Mr. Wachtel: That is all.
Trial Examiner Ringer: All right. We will adjourn until one-thirty sharp.
Mr. Wachtel: I would like to ask one more question.
Trial Examiner Ringer: All right. We are going to proceed with one question here, to save time.
Mr. Lodish: The question, apparently, was confusing to the witness.
Q. (By Mr. Wachtel) You are telling us now, aren't you, that you did sign a letter?
A. I signed a letter, but I didn't write no letter.
Q. Did you sign a letter to the International?
A. Yes.
Q. Protesting your suspension from the Local—right?
A. I don't remember even what the letter wrote, it was in such a hurry.
Q. Was the letter read to you?
A. No.
Q. You didn't know anything, what was in it?
A. No.
555 Q. And you signed it?
A. Yes.
Mr. Wachtel: That is all.

WILLIAM BEHRSE, being recalled, further testified as follows:

Recross-examination

Q. (By Mr. Wachtel) You are and have been a member of the Metal Polishers' Union?

A. Yes.

Q. And you know of the rules regarding suspension do you not?

A. I do.

Q. Did you get a notice of suspension?

A. No; I didn't.

Q. Did you write a letter to the International?—

A. I did.

Q. Protesting your suspension from the Local?

A. Not suspension.

Q. Your fine?

A. Put a fine of five hundred dollars without giving us a trial.

Q. But you did write a letter?

A. I did.

Q. Who signed that letter besides yourself?

A. I did, Joe Macho did, John Masters, Art
556 Kruse, and L. Meissner.

Q. Who composed that letter?

A. I wrote that letter.

Q. Did you read that letter to the other men that signed it?

A. I wrote a copy of that letter, and I will tell you what it came about. Art came around, our business agent, and protested giving a five-hundred dollar fine without giving a trial, and according to our Constitution you have got to give a man trial, and I was not told officially I have got a five-hundred dollar fine on me. So I don't know whether it was so or not.

Q. So you wrote a letter?

A. They came down to see Ray Muehlhoffer, our business agent. He said, "Forget that fine. There is nothing to it. White a letter and it will clear up." I did write up that letter and Art Kruse copied that letter and wrote that, and I signed it, too. I protested about that trial, the way it was given to you.

Q. Did you write it or Art Kruse, or who wrote it?

A. I wrote that letter and Kruse copied it and sent it out.

Q. Was that letter read out loud to the five men that signed it?

A. I gave it each one to read it.

Q. Each one?

A. Yes.

Mr. Lodish: You asked him if it was read out loud?

557 Mr. Wachtel: And he said he gave each one a copy to read.

The Witness: The same copy that was sent.

Q. (By Mr. Wachtel) You gave to each one of them?

A. Yes.

Q. Did you see him take that copy from you—did Mr. Macho take that copy from you before he signed it?

A. Yes; he read it and signed it.

Mr. Wachtel: That is all.

Mr. Lodish: At this time I would like to say that this is not proper cross-examination, and I will move to have it all stricken unless the letter is produced.

Mr. Wachtel: They have testified about the letter. We can bring the witness back if you are not satisfied, to have the letter go in.

Trial Examiner Ringer: Is that letter not going to be brought in?

Mr. Wachtel: We can produce the letter, but I don't know if we want to. He is not denying he wrote the letter.

Trial Examiner Ringer: I will tell you frankly that if that letter is not brought in I will strike all this part out.

Mr. Wachtel: We will bring it in.

Mr. Woodle: If we have to produce a letter of that nature, then I want to make another request to produce the application letter that Mr. Carey mentioned in his testimony.

558 Mr. Carey: It has been already agreed to that that would be produced.

(Discussion off record.)

Trial Examiner Ringer: At this time we will adjourn

until one-thirty this afternoon.

(Thereupon at 12:15 o'clock p. m. a recess was taken until 1:30 o'clock p. m.)

After Recess

(The hearing was resumed at 1:30 o'clock p. m. pursuant to the taking of recess.)

Trial Examiner Ringer: All right, gentlemen, whenever you are ready.

(Mr. Steve Dragosa takes the stand.)

Trial Examiner Ringer: Were you sworn?

Mr. Dragosa: No:

(Mr. Dragosa sworn by Trial Examiner Ringer.)

Trial Examiner Ringer: All right. Let us proceed.

STEVE DRAGOSA, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Lodish) Will you state your full name and address, please?

A. Steve Dragosa.

Q. And your address, please?

559 A. 15012 Hale Avenue.

Q. 15012 Hale Avenue?

A. Yes, sir.

Q. Are you working now, Mr. Dragosa?

A. I working in a different place, yes.

Q. And do you have a permanent or temporary job?

A. Well, just hang around, you know, make my living; that is just temporary.

Q. Just temporary?

A. Yes.

Q. Did you work at the Electric Vacuum Cleaner Company?

A. Yes, I did.

Q. What was the last day you were there?

A. 19th of March, about three hours.

Q. Do you know how much money you have earned or gotten through any source since that day?

A. Well, I have been made outside since that two hundred and thirty dollars.

Q. Two hundred and thirty dollars?

A. Yes, sir.

Q. That is, altogether?

A. That is altogether.

Q. And do you have any money coming that you earned that has not been paid to you yet besides the two hundred and thirty dollars?

560 A. Yes, what I made last night.

Q. Just last night?

A. Yes. Two nights I got coming.

Q. How long did you work at the Electric Vacuum Cleaner Company?

A. I start 1928, '29, and 8th of March, just exactly five years past on the 8th of March.

Q. You worked there five years?

A. Eight years.

Q. What was your job there?

A. Buffing and polishing. I do them both.

Q. How much were you getting an hour there?

A. A dollar and five cents.

Q. For a forty-hour week?

A. Forty hours a week.

Q. When did you first join a union? When was the first time you ever joined a union?

A. About two years ago. I wouldn't say what date it was, but when all the rest bunch organized, I joined.

Q. About two years ago?

A. About two years ago, yes.

Q. You joined the American Federation of Labor?

A. Yes, sir.

Q. Do you remember better than that when it was—do you remember the strike in the summer of 1935?

561 A. I didn't remember just the date when that break out. That was break out on account of the MESA.

Q. I am talking about that strike.

A. Yes.

Q. Do you remember that strike?

A. Yes.

Q. Did you join the American Federation of Labor after that strike?

A. I was in already.

Q. You mean after the strike?

A. No; before the strike I was in A. F. of L.

Q. So it was before the summer of 1935?

A. Yes.

Q. How much before? How many months, do you know?

A. I couldn't tell you just exactly how many months before.

Q. And did you pay your dues?

A. I pay my dues regular.

Q. When was the last time you paid dues?

A. I was throw already right now and I was offering to pay my dues, and Mr. Rinehart, Secretary, he refused it of me, he won't take it of me.

Q. That was lately?

A. That was lately.

Q. I am trying to build this up slowly. Now, going back to 1936.

562 A. Yes.

Q. You have got that in mind—last year?

A. Yes.

Q. Did you pay your dues all last year?

A. Yes.

Q. You were a member in good standing?

A. Yes.

Q. How about 1937?

A. I had 1937, January paid, and I was holding back with the dues March and April.

Q. You were two months behind?

A. Yes; then I offer him dues and he refuse it, he won't take it of me.

Q. This was after the trouble started?

A. After the trouble started.

Q. Did you ever join the C. I. O.?

A. Yes, I did, after that when there was majority. I joined, followed the majority.

Mr. Spieth: Objection.

Trial Examiner Ringer: Overruled.

Q. (By Mr. Lodish) When did you join the C. I. O.?

A. I couldn't tell you the date. I was out already when I joined up.

Q. While the plant was closed?

A. (No answer.)

563 Q. After the plant closed?

A. After the plant closed, yes.

Q. Was it the same day or later or when?

A. It was about a week after.

Q. Where did you join? Was it at a meeting?

A. No; I was coming home.

Q. You joined at your home?

A. Yes.

Q. Did you ever drop out of the American Federation of Labor?

A. Never did before, just that was the first time I drop out.

Q. What did you do about dropping out? Did you write a letter? Did you say anything? Did you tell anybody?

A. No; I went down and they had a peace conference, Labor Board, so everybody go back to work, then through the night they bring that.

Q. What?

A. Through the night they bring that agreement and everybody had to go down to the International Hall, Metal Trade Hall, to get a permit to get to work.

Q. You had to get a card to go to work?

A. Yes.

Q. I am not there yet. Were you ever at a C. I. O. meeting at Arnold Hall?

A. I was there; after they signed application I was there.

Q. Did somebody call your name out at that meeting?

564 A. Yes.

Testimony of Steve Dragosa

Q. Did you answer to your name?
A. Yes.
Q. Do you know what that was for?
A. Yes, sir.
Q. What was that for?
A. To join in. To swear to be a member of C. I. O.
Q. You don't remember when that meeting was, do you?
A. No; I couldn't tell you just exactly what date that was.
Q. Some time while the plant was closed?
A. Yes, some time while the plant was closed.
Q. How many people were at that meeting?
A. There was around, what I can figure around four or five hundred people in there.
Q. Do you remember the sit-down strike Thursday, March the 18th?
A. Yes, sir.
Q. You were not in that?
A. No; I was in Polishing Room where I belong.
Q. Did you go to work Friday, March 19th?
A. Yes, sir; I put in about three hours.
Q. How did you happen to put in three hours? What happened then?
A. We was working three hours and Mr. Muehlhoffer coming in and I was just in middle of morning. I
565 wanted to have a drink of water. He said, "Take out and beat it out as quick as you can." I was surprised what he say that. Then it was hollered in middle of the shop by the clock, "Shut the power down." Everybody walk out, and Mr. Homer, our boss, he was walking out from us. We all walked out together. When we walked out from Polish Room the bunch sat down on the other end and Mr. Homer hollered, "Stay there; maybe those guys beat you up." And somebody said, "Don't worry; you won't get beat up."
Q. Mr. Homer told you to stay there, that if you left you might get beat up?
A. Yes.
Q. Who was Homer?

A. That was our boss.

Q. Is Homer his first name?

A. I don't know. Maybe the second name. Mr. Wilson can probably explain it better.

Q. Is that a Mr. Schermerhorn?

Mr. Wilson: Yes, sir; Homer Schermerhorn.

Q. (By Mr. Lodish) He told you to stay there?

A. Yes.

Q. And you said that the C. I. O. group who were sitting down told you not to worry, that you would not get beat up?

A. Exactly.

Q. Then what did you do?

A. Then when the guy walked down to our bunch, 566 he said, "Come on boys, take a walk."

Q. Who said that?

A. I don't just remember. Somebody from the group.

Q. Somebody in the group? You don't know who?

A. I don't know just exactly who it was.

Q. Did you leave then?

A. We walking in the dressing room and wash ourselves and walk out together.

Q. How long did you stay?

A. Where? You mean in the dressing room?

Q. Yes.

A. Just to get through to dressing and washing.

Q. Were you in the plant long enough to hear Mr. Scott—were you there when he came back, Mr. Walter Scott?

A. No; I never saw him in the plant.

Q. You left—

A. I left before that.

Q. What time did you leave?

A. Just around ten o'clock.

Q. In the morning?

A. In the morning, yes.

Q. Then you left and that was all you had to do that day?

A. Yes.

Q. And the next thing you had to do, the plant was

closed?

A. Yes.

567 Q. Did you hear about it from the newspapers?

A. I was notified they had settled up from the sit-downer, that the plant would be re-opened again Monday. Until that time I don't know what happened. Who closed them, company or A. F. of L., they was entirely closed. I came to work Monday again to go in. It was closed entirely; there was no picket line at all. Just plant was closed. And the next notice when that would be open.

Q. The plant opened April 5th?

A. Yes, sir.

Q. Did you go down and try to get to work?

A. Yes, sir.

Q. What happened then?

A. We got to have cards. I didn't have no card.

Q. Did you try to get a card?

A. I went down to the Metal Trade Hall and tried to get a card and they refused to give me a card.

Q. Who refused you?

A. It was Mr. Rinehart, the Committee, and Mr. Leonard Trask.

Q. Trask—T-r-a-s-k?

A. Yes, sir.

Q. What did they say to you as to why they refused your card?

A. I said, "I come here to get a permit to go back

568 to work." He said, "What is the matter with you, you don't want to sign it?" I said, "I don't know what to do, where I belong. I am a member from the A. F. of L. I come over to get a card." He said, "Now, now." And four or five guys get in a ring and don't let me explain to him.

Q. You say four or five men were in a ring around you?

A. Yes.

Q. And they didn't give you a chance to talk?

A. No; they don't give me a chance to talk at all.

Q. Go ahead. What did he say?

A. He said, "Steve, what is the matter with you you don't sign, you throw the A. F. of L. members out of the

house?" I said, "Bring the witnesses in here, that I don't throw anybody out of my house. All I want to sign those cards for, I am a good member standing A. F. of L. When the shop opened, I go back to work." They started to joke around and then the other two guys outside the Committee, they started to talk rough. They started to make rings out of me, and I was lucky to get out without a beating. Since that I never went down any more. I went down to the shop, and I had a guard to walk with me to the shop to get my clothes. That was Rinehart and some now guy that was hired after I left the shop. They don't let me go down to the Polish Room. They pick up my clothes and brought my clothes over to the gate from the dressing room.

569 Q. When was that that you got your clothes?

A. Ten days or a week later.

Q. Your clothes were in the plant all this time?

A. All that time; yes, sir.

Q. And you got it ten days later?

A. Yes, sir.

Q. I asked you what was said about the card. What was said about the card while you were at Metal Trades Hall? Did they refuse to give it to you, or did they give you one?

A. I said, "Mr. Rinehart, I come over to get my permit to go back to work." He said, "Where was you before?"

Q. He said, "Where was you before?"

A. Yes; he said, "Where was you before?" I said, "I was outside, the same as the rest of the guys."

Q. What day was this?

A. What day?

Q. Yes. When was that?

A. I didn't mark the day down. I was mixed up and excited, walking around the street, and one thing and another.

Q. So you told me you were outside?

A. Yes.

Q. Then what else?

A. You mean from the Metal Trade Hall?

Q. Yes; about the cards, just about the cards?

A. When I said for the cards, he said to me, he

570 said, "You not going to get a permit. When we need you, we send after you."

Q. You said before that you offered to pay your dues?

A. Yes, sir.

Q. When was that?

A. That was after, when I went after my card.

QQ. How many days after?

A. That was two weeks the shop was full power working already.

Q. And you wanted to pay your dues?

A. And I wanted to be a member just as soon as I had a chance to get in, for a laborer or something like that. He said, "You tell Steve I ain't going to take the dues until I see how this thing going to come out." And two years April comes and I was throw out from the Union, and after that I didn't bother nobody.

Q. Did you ever try to get back to work at the shop itself? I am not talking about Metal Trades Hall.

A. No; I never tried. I just went down there when the boys sent me. You had to go down to the Metal Trades Hall to get a permit. I didn't get one, and a couple days later I was waiting in a Committee on the outside, and I said—there was a couple guys with me—and I said to Rinehart, "Rinie, what I do in the shop? What I do anything wrong since my time I been in this plant?" He said

571 to me, "I don't know what you do, but the boys don't want to work with you." I said, "How about my clothes? I want to get my clothes." And he sent two guys with me, sent a guard, to get my clothes.

Q. And you went to the plant?

A. I went to the plant, to the dressing room, and the boys got my clothes, polishing cloth and apron and stuff like that and I walked out. I say boodbye and I walk out.

Q. Mr. Dragosa, can you read English?

A. Not very well.

Q. Not very well?

A. No.

Mr. Lodish: That is all.

Testimony of Alfred Meissner

Direct Examination

Q. (By Mr. Carey) Who told you to go down to the Metal Trades to get a card?

A. The whole bunch, you know, was talking. They went before to get his cards.

Q. Some of the people that you work with in the department?

A. Some of the people that worked for C. I. O., they told me, "You got to go down if you want to go to work Monday."

Q. When you went back to get your clothes, who went with you?

A. Leonard Trask and some guy, I don't know him, big tall guys, I don't know who they are.

Q. Where did you see them?

572 A. Right in front of the gate. The guys was talking from inside the gate and opened the gate.

Q. Did they go in to get the clothes, or did you go in with them?

A. Yes.

Q. Which is it? Did they go in to get them?

A. They go with me. Walk right to the dressing room with me, and I said, "That is all I got, overalls and the cap." I had a pair of gloves and my shoes under the bench. And they said, "Wait a minute, I will get it for you." And I was waiting there and they brought the things and I wrapped up and take them out.

Mr. Carey: That is all.

Mr. Woodle: No questions.

Trial Examiner Ringer: Next witness.

(Mr. Alfred Meissner takes the stand.)

Trial Examiner Ringer: Were you sworn?

Mr. Meissner: No, sir.

(Mr. Meissner sworn by Trial Examiner Ringer.)

ALFRED MEISSNER, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Testimony of Alfred Meissner

Direct Examination

Q. (By Mr. Lodish) Will you state your full
573 name and address, please?

A. Alfred Meissner.

Q. Is that M-e-i-s-s-n-e-r?

A. Yes, sir.

Q. And your address?

A. 14520 Potomac.

Q. 14520 Potomac Avenue, East Cleveland, Ohio?

A. Yes.

Q. Are you working now, Mr. Meissner?

A. Yes, sir.

Q. When did you get the job you now have?

A. On May 18th, at Murray-Ohio Manufacturing Company.

Q. I didn't ask you where you worked. I just asked you when you got it?

A. May 18th.

Q. Do you know whether that job is permanent to temporary?

A. Well, that is hard to say.

Q. You don't know?

A. No.

Q. Do you know whether you would like your job back at the Electric Vacuum Cleaner Company if you could get it, the same job you had before?

A. I would. It is more money.

Q. It is a better job than the one you have now?

A. Yes.

574 Q. What was the last day you worked at the Electric Vacuum Cleaner Company?

A. The day the strike was called, March 19th.

Q. And do you know how much money you have earned or gotten from all sources since that date to the present?

A. Yes, sir.

Q. How much is that?

A. Eighty-five dollars in the place I am working now. That is all the work I have done since.

Q. Eighty-five dollars is all that you have made to date?

A. Yes, sir.

Q. What were you earning at the Electric Vacuum Cleaner Company?

A. At the time I left there I was earning a dollar and five cents an hour.

Q. Forty-hour week?

A. Forty-hour week.

Q. What was your job?

A. Polishing.

Q. Polisher?

A. Yes, sir.

Q. How long had you worked there?

A. Since—I had worked there eight years.

Q. Eight years?

A. Yes, sir.

575 Q. Now, when was the first time you ever joined the Union?

A. Right shortly after I started there.

Q. Eight years ago?

A. American Federation of Labor; yes, sir.

Q. Have you been a member of that all through the period?

A. Well, we dropped it for I supposed about two years during the depression.

Q. And then you renewed it again?

A. Yes.

Q. And then did you continue to be a member up to recently?

A. Yes, until the strike.

Q. Did you join any other union recently?

A. Well, after the strike I joined the C. I. O. Union.

Q. When did you join the C. I. O. Union?

A. During the strike.

Q. You mean during the time the plant was closed?

A. Yes.

Q. From March 19th to April 5th?

A. Yes.

Q. How did you join the C. I. O. and where?

A. Well, I went to one of their meetings. They had a membership of about six hundred or better.

Mr. Spieth: I object to that, your Honor. He has no means of knowing.

Trial Examiner Ringer: That may go out.

576 Mr. Lodish: It is not responsive.

(Q. By Mr. Lodish) You went to a meeting?

A. Yes.

Q. Where was the meeting?

A. At 152nd Street.

Q. Was that Arnold's Hall?

A. I think it was.

Q. About how many people were at that meeting?

A. I couldn't say, but they told me they had a membership of about six hundred.

Mr. Spieth: I object and ask that that go out.

Trial Examiner Ringer: Sustained.

Q. (By Mr. Lodish) I don't want to know what you were told. But can you give me an estimate, to the best of your ability, as to how many people were in the room at that time?

A. I thought there were about seven hundred there.

Q. That was your opinion?

A. Yes.

Q. Was your name read at that meeting?

A. No; I had not been a member.

Q. That was your first—

A. That was the first time I came there.

Q. They had no signature of yours at that time—no card?

A. No.

Q. And did you sign a card there?

577 A. I did.

Q. And that is what you mean when you say you joined the C. I. O. at that time?

A. Yes.

Q. Did you do anything about your American Federation of Labor membership there?

A. No; I didn't.

Q. You didn't do anything about that?

A. I was still in good standing with the American Federation of Labor at the time.

Q. You said the last day you were in the plant was March 19?

A. Yes.

Q. What day did you leave the plant?

A. Nine o'clock.

Q. What time of day did you leave the plant?

A. At nine o'clock.

Q. Early in the morning?

A. Yes.

Q. Was that a movement of the group, that all of you polishers leave at that time?

A. Our business agent came in and took us all out.

Q. So that it was a group move?

A. Yes.

Q. You all left at that time?

A. Yes.

578 Q. And you have never been in the plant since?

A. No.

Q. What effort have you made to get back to work since March 19th?

A. Well, I talked to my foreman twice, and he told me to go see the business agent and get a card.

Q. Who was your foreman?

A. Mr. Schermerhorn, Homer Schermerhorn.

Q. Homer Schermerhorn?

A. Yes.

Q. When were the two things that you talked to him? Can you give us some idea?

A. Yes; it was the first week in May; that was the first time I got into the plant.

Q. The first week in May was it?

A. The first week in May, yes.

Q. What effort did you make before that?

A. They had a guard at the gate. I even tried to get in to get my clothes out and I couldn't get in without a card.

Q. Did you go down to the plant April 5th before it opened?

A. I was there, yes.

Q. What efforts did you make to get a card?

A. Well, I went down to the Trades Council, or the hall, you know, several times. I couldn't find the business agent in.

Mr. Speith: A little louder.

579 Q. (By Mr. Lodish) A little louder?

A. I couldn't find the business agent in. Several times I was down there and I kind of gave it up.

Q. Did you ever find anybody in there?

A. Yes; I did. Talked to him.

Q. To whom?

A. Mr. Muehlhoffer.

Q. When was it that you talked to him, do you know, about the approximate date?

A. Well, it was the first time—right after I talked to my boss.

Q. I see. That was the first time you got to see him?

A. Yes.

Q. What did he say?

A. Well, he told me I had a five-hundred dollar fine on me and he couldn't take me back in and he couldn't give me a card to go back to work. There were three of us together at the time.

Q. Go ahead.

A. He gave us advice to write to W. W. Britten in Cincinnati and he thought he could clear it up to get us to go back to work.

Q. Muehlhoffer told you to write Britten in Cincinnati?

A. Yes.

Q. Who did he tell you Britten in Cincinnati was?

580 A. Oh, I don't know.

Q. Did he say anything about his connection? Is he an official of the United States Government?

A. He is an official of the American Federation of Labor.

Q. Did you then write a letter?

A. Well, one of the other fellows did.

Q. Did you sign that letter?

A. No; I didn't.

Q. You just heard that it was written?

A. Yes.

Q. Do you know how many people did sign that letter?

A. No; I don't.

Q. But you didn't?

A. No; I didn't see the letter.

Q. Who were the other people with you when Muehlhoffer suggested writing that letter?

A. Arthur Kruse and Johnny Meissner.

Q. Did you ever get an answer—did they ever get an answer?

A. Yes; they got an answer. I saw the answer.

Q. Oh, you saw the answer?

A. Yes.

Q. Let me ask you this: If you know, when was that letter sent?

A. It must have been around—

581 Mr. Spieth: I object to this line of testimony, your Honor. It is not a letter that he wrote and he has nothing to do with it. As far as he is concerned, it is not competent.

Mr. Lodish: It is in evidence that the letter was sent. I will withdraw it.

Q (By Mr. Lodish) You say you saw the answer?

A. Yes, sir.

Q. What did the answer say?

Mr. Spieth: I object.

Trial Examiner Ringer: Overruled.

A. I couldn't say it word for word, but the gist of the answer was that they couldn't do anything for us, we would have to go back to our Local, you know, our body of men, and they would have to take the fine off of us.

Q. Do you know where that answer is?

A. No; I don't. Mr. Kruse should have it, but he hasn't it with him. I asked him a while ago whether he had the letter with him.

Q. You mean he is somewhere in the building and you asked him?

A. Yes.

Q. And he said he didn't have it with him?
A. Yes.
Mr. Lodish: That is all.
Mr. Carey: No questions.
582 Trial Examiner Ringer: Anything from Mr. Woodle or Mr. Wachtel?
Mr. Woodle: Just one second.
(Discussion off the record.)
Trial Examiner Ringer: Next witness.
(Mr. Arthur Kruse takes the stand.)
Trial Examiner Ringer: Have you been sworn?
Mr. Kruse: No.
(Mr. Kruse sworn by Trial Examiner Ringer.)

ARTHUR KRUSE, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Lodish) Is your name Arthur Kruse?
A. Arthur Kruse.
Q. Is your address 14801 Saybrook Avenue?
A. 14201.
Q. 14201 Saybrook Avenue, Cleveland, Ohio?
A. Yes.
Q. Are you working now, Mr. Kruse?
A. Yes.
Q. When did you get the job you now hold?
A. A week ago Friday, June 4th.
Q. June 4th?
A. Yes.
583 Q. Do you know whether that job is permanent or temporary?
A. I don't know.
Q. Is it such a job that you prefer to keep that, or would like your old job if you could get the same back?
A. I would prefer my old job back under conditions.
Q. Under any different conditions than you have?
A. I do, under different conditions.

Q. Well, what are the different conditions that you want?

A. Providing there is an election—

Mr. Orgill: We object to that, if the Court please.

Trial Examiner Ringer: Overruled.

A. Providing there is an election taken in the plant as to the representing agency in the Union.

Q. (By Mr. Lodish) Then the only thing you are concerned with is the question of who represents the men?

A. Yes.

Q. What I meant was the matter of wages and hours and working conditions. I am talking about your old job. If you can get your old job on the same general terms of wages, hours, and working conditions, you would prefer that to the one you have?

A. I would.

Q. That is my question. Was the last day you worked at the Electric Vacuum Cleaner Company March 19th?

A. March 19th.

Q. And how much have you earned or gotten
584 through all sources since that date?

A. Up to the 5th day of June, I hadn't worked up to that time.

Q. And how much up-to-date?

A. Up-to-date I have drawn five dollars, one day's pay.

Q. How much money do you have coming to you that you have earned but not yet received?

A. Approximately twenty-five dollars.

Q. You received five and have twenty-five dollars more coming?

A. Yes.

Q. And that is the total from March 19th to date?

A. Yes.

Q. How much were you earning at the Electric Vacuum Cleaner Company?

A. Forty-two dollars a week.

Q. That is a dollar and five cents an hour?

A. A dollar and five cents an hour.

Q. Forty-hour week?

A. Yes.
Q. What was your position there?
A. Polisher.
Q. How long had you worked there?
A. Approximately seven or eight years.
Q. Seven or eight years?
A. Yes.
585 Q. What was the first union you belonged to?
A. A. F. of L.
Q. When did you join that?
A. 1929.
Q. Did you remain a member in good standing up until recently?
A. I did.
Q. Did you leave the plant March 19th, in the morning?
A. Friday, the last day, yes.
Q. The same as the rest of the group?
A. Yes.
Q. Did you thereafter or at any time join the C. I. O.?
A. I did.
Q. When did you join the C. I. O.?
A. Perhaps a week later.
Q. While the plant was closed down?
A. Yes.
Q. Where did you join the C. I. O.?
A. St. Clair.
Q. Was it at a meeting?
A. Yes.
Q. At Arnold's Hall?
A. Arnold's Hall.
Q. How many people do you think were there?
A. I would judge between five and six hundred.
Q. And that was the first time you joined, there?
586 A. Yes.
Q. So they didn't have your name before you were there?
A. They didn't.
Q. Now, did you do anything about your American Federation of Labor membership at that meeting?

A. I resigned at that meeting.

Mr. Spieth: I object. That is a conclusion. He asked him what he did about it.

Mr. Lodish: I will get it explained.

Q. (By Mr. Lodish) How did you do that? What did you do through the C. I. O. representatives? What was the procedure? What happened? Just describe what happened. Did you write something? Did somebody else write something?

A. There was a formula that was signed by us.

Q. Did you sign something?

A. I didn't sign it.

Q. What did you do?

A. I gave them permission to list my name on the formula.

Q. Do you mean by a "formula" a resolution or motion of some kind?

A. It was a resignation from the American Federation of Labor.

Q. Did you go to the plant the morning of April 5th, the day it opened?

A. Yes.

587 Q. And did you try to get in the plant?

A. No; I didn't.

Q. What did you do with reference to attempting to get your job back, if anything.

A. I went down to the Local, Local No. 3.

Q. When was that?

A. That was perhaps three or four days after the plant opened and the business agent there told me that he didn't think it would do me any good.

Q. What was that?

A. Ray Muehlhoffer.

Q. You went to see him?

A. I went to see Ray and from there he sent me back to the plant, and I was refused admittance there.

Q. What did you do, April 5th, if anything?

A. Just recalling the dates, I just don't know.

Q. That was the first day the plant opened. What did you do when you went down to the plant?

A. Well, I looked around the street there to see what was going to happen.

Q You say you didn't try to get in the plant?

A. I didn't try to get in the plant.

Q. What was the reason for that?

Mr. Orgill: Objection.

Trial Examiner Ringer: Overruled.

588 A. First of all, I didn't like the violence that was going on there.

Mr. Orgill: I ask that that be stricken out.

Trial Examiner Ringer: It may go out.

Q. (By Mr. Lodish) The question was this: Why didn't you try to get in the plant? Didn't you want your job back?

A. I did want my job back.

Q. Then why didn't you try to get in the plant, briefly?

A. I didn't want to take a chance and have to fight my way through there.

Q. How many times did you talk to Ray Muehlhoffer about your card?

A. Three times.

Q. And how many times were you at the plant?

A. Three times.

Q. And you were never able to get a card?

A. No.

Q. Did you ever get into the shop to talk about that?

A. I did get into the shop once.

Q. When was that?

A. That was after they was settled out there and quiet, and I went in and I was talking to the foreman.

Q. Who was that?

A. Homer.

Q. What did he say?

589 A. Well, he just told me there was nothing he could do. It was just all up to the American Federation of Labor.

Q. Did you ever hear anything about a closed shop?

A. I didn't.

Q. You did not?

A. I did not until on the 5th when the plant reopened and the business agent—that is Ray Muehlhoffer—approached me on the street and told me that I better get back in the plant; we would be fools if we didn't go back. I said, "Why? What do you mean?" He said, "You are going to have a closed shop agreement here within the next ten days. You are going to have."

Q. Before some of you men joined the C. I. O., did you know whether all of the polishers belonged to the American Federation of Labor?

A. Well, I don't know.

Q. Did you know any polishers who didn't?

A. I don't know that.

Mr. Lodish: That is all.

Trial Examiner Ringer: Proceed in the usual order, gentleman.

Mr. Carey: No questions.

Trial Examiner Ringer: Respondent? Any questions, Mr. Spieth?

Mr. Spieth: No.

590 Trial Examiner Ringer: Any by you, gentlemen (addressing Messrs. Woodle and Wachtel).

Mr. Wachtel: No questions.

Trial Examiner Ringer: Next witness.

EDWARD RERICHA, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Lodish) Your name is Edward Rericha?

A. Correct.

Q. R-e-r-i-c-h-a?

A. That is right.

Q. 15411 Kinsman Road?

A. That is right.

Q. Cleveland?

A. Cleveland.

Q. Are you working now?

A. Yes.

Q. When did you get the job you are now holding?

A. June 11th.

Q. And where was the last place you worked before that?

A. Electric Vacuum Cleaner Company.

Q. And the last day was March 19th?

A. March 11th.

591 Q. March 11th?

A. March 11th.

Q. Well, to make it short, Mr. Rericha, why weren't you working from March 11th to March 19th?

A. You see, I was behind in my dues. I went to the Secretary and I asked him—I had a daughter graduating and I told him I paid four dollars for pictures one pay and the next pay I would pay three dollars more. I asked him if it would be all right to be a little behind, and he said if I would give him four dollars next pay, the 12th, it would be all right. I went downtown on the 10th, and when I came in on the 11th, my time card was withdrawn.

Q. Were you told you were fired?

A. Yes.

Q. By whom?

A. He told me to go downtown and see Ray, and when I went downtown he was not there.

Q. Who told you you had to go downtown?

A. Rinehart.

Q. Rinehart?

A. Yes.

Q. So that you were fired March 11th?

A. That is right.

Q. And you were not in the plant from that time on?

A. No.

592 Q. How long had you worked at the Electric Vacuum Cleaner Company?

A. I started in 1926, around March, 1926.

Q. You worked there about eleven years?

A. Something like that.

Q. How much were you making before you were fired?

A. A dollar and five cents an hour. Eight dollars and

forty cents a day.

Q. Can you tell us how much money you have made altogether from March 11th to date, all the money you have earned or gotten by way of relief, or other sources?

A. Around eighty dollars.

Q. About eighty dollars?

A. Yes.

Q. What was your job at the Electric Vacuum Cleaner Company?

A. Metal polishers.

Q. Have you made any effort to get back to work after March 11th?

A. I went down and I didn't get anything.

Q. You went down where?

A. Down to the Metals Trades, and they told me my card was withdrawn.

Q. Had there been any complaint about your work at any time?

A. None whatever.

Q. How long had you been a member of the
593 American Federation of Labor?

A. I joined as apprentice in 1913.

Q. Had you belonged regularly all that time?

A. Well, on and off all the time.

Q. Did you ever join the C. I. O.?

A. I did.

Q. When?

A. I don't know. During the struggle, I think.

Q. While the plant was closed?

A. Yes.

Q. Where did you join—at a meeting?

A. Yes.

Q. At Arnold's Hall?

A. Yes.

Q. Now, after March 11th, when you went down to Metal Trades Hall, did you make any offer of paying dues or anything of that kind?

A. No; I didn't.

Q. What was the conversation then?

A. You see, on March 11th, when I come down there,

my card was withdrawn, and after the Secretary told me it was all right on payday morning, the 11th was the payday morning, I didn't receive my pay then and I come down there and I said, "What is the matter with my time card?"

He said I would have to see Rinehart, so I went down
594 there, and he said I would have to see Ray, so I went down and I didn't see Ray then, they accused me of saying something against them, which I didn't know anything about, and I went on trial, the Local No. 3, and they accused me of being paid up two months member of C. I. O., which was all wrong.

Q. You were not a member of the C. I. O.?

A. No.

Q. What happened at the trial?

A. I was supposed to go back on the following Monday, and the plant was closed for two weeks.

Q. You don't know what the ruling was?

A. The ruling was that I was to go back to work, but I haven't been back since.

Q. That was the ruling of the Labor Court?

A. It was just members of the Local.

Q. How do you know that was their ruling?

A. One of the members told me. You see, when I was suspended they was pretty well mad; they all went down to the meeting. There must have been possibly seventy of them. They couldn't see why I was suspended.

Q. About seventy polishers went down?

A. Yes.

Q. Objecting to your suspension?

A. Yes.

Q. Who told you that you were supposed to go to work?

595 A. One of the members that worked there.

Q. Who was that?

A. Jack Whitmer.

Q. Jack Whitmer?

A. Yes.

Q. When he told you that, did he say anything about this trial you had?

A. No; he just said, "Come back and you will get rein-

stated, and go to work." The Federation had closed the plant for two weeks then and there was no work then.

Q. And you have heard nothing since?

A. No.

Mr. Lodish: That is all.

Trial Examiner Ringer: Questions in the usual order.

Direct Examination

Q. (By Mr. Carey) When you were charged with being a member of the C. I. O.—

A. That is correct.

Q. —who placed the charges against you?

A. The Secretary, I understand, did.

Q. Do you know how he became aware—the evidence he had that you were a member of the C. I. O.?

Mr. Spieth: I object. I don't see that that is competent.

Trial Examiner Ringer: Sustained.

596 Q. (By Mr. Carey) Did you discuss in the shop your feelings towards the C. I. O.?

A. We talked several times.

Mr. Spieth: I object.

Trial Examiner Ringer: Sustained.

Mr. Carey: Mr. Examiner, I desire to show that the man made known through his fellow employees that he favored the C. I. O. Union and, as a result of that, he lost his employment.

Mr. Wachtel: What date?

Mr. Carey: The date was not in the question.

Trial Examiner Ringer: I will overrule the objection to that. Go ahead and answer.

Q. (By Mr. Carey) Previous to March 11th?

A. Yes; we discussed the C. I. O.

Q. Did you discuss your attitude to the C. I. O. with your fellow workers?

A. Oh, several of them, yes.

Mr. Orgill: We object to that, if the Court please.

Trial Examiner Ringer: Overruled.

Mr. Orgill: Whether he discussed his attitude is purely a conclusion. What he said may be interesting.

Q. (By Mr. Carey) What was the substance of your discussion with your fellow workers in regard to this?

A. Some of them used to work in the foundry,
597 and things got pretty tough down there and they raised the production for them and they made it miserable for them. They would go to their business agents and they would tell them—

Mr. Orgill: I ask that the answer be stricken.

Trial Examiner Ringer: It is not responsive. It may go out.

Q. (By Mr. Carey) What did you state to your fellow workers in regard to your feelings toward the C. I. O. in the Electric Vacuum Cleaner Company?

A. I thought if we would all belong together, we would get better results.

Mr. Carey: No further questions.

Trial Examiner Ringer: Any questions by either of you gentlemen (addressing Messrs. Wachtel and Woodle)?

Mr. Woodle: What is the answer to the last question, please?

Trial Examiner Ringer: Read the answer to the last question.

(Last answer read by Reporter.)

Mr. Woodle: That is not responsive. I ask that it go out.

Mr. Carey: Mr. Examiner, it is what he said.

Mr. Woodle: He didn't say that.

Trial Examiner Ringer: Overrule the motion.

Cross-examination

Q. (By Mr. Wachtel) Mr. Rericha, this trial that
598 you had was a week or more before the plant was closed?

A. Just during that week, yes.

Q. You were there at the trial; weren't you?

A. That is right.

Q. You were there when the finding was made; weren't you?

A. Yes; I was at the executive meeting, yes.

Q. And you were fined; weren't you?

A. No, sir.
Q. Wasn't there a fifty-dollar fine against you?
A. No, sir.
Q. You were suspended?
A. I was suspended and that was all.
Q. That was all?
A. That was all.
Q. You know the rules of your Polishers' Union; don't you?
A. Part, yes.
Q. You have been a member for how many years?
A. A good many years.
Q. A good many years since 1913?
A. Yes.
Q. You have attended most of the meetings; haven't you?
A. Oh, quite a few, yes.
Q. Did you know the rules that you were liable for suspension for any activity which would disrupt your own Local or any activity against the officials in your own
599 Local organization?
A. I don't know. There has been so much of that that it has never been taken up.
Q. Did you know of the rule?
A. No.
Q. It has never been told to you?
A. No.
Q. Were you apprised of it at the hearing?
A. No.
Q. At your Local?
A. No. They just preferred charges against me, and that is all there was to that.
Q. But the fact was you weren't suspended on March 1st for non-payment of dues?
A. That is right.
Q. The fact is you were suspended because you were found guilty of some action against your own Local?
A. No, sir. Suspension of dues.
Q. Was that the charge made against you at the trial?
A. Yes, sir.

Q. You are positive of that?

A. That is right.

Mr. Wachtel: That is all.

Examination by Trial Examiner Ringer

Q. (By Trial Examiner Ringer) Just a question
600 or two. Did you go back on April 5th to the plant when it opened up?

A. Yes.

Q. Did you get in or try to get in?

A. We was all there and didn't get in.

Q. Did you make any further efforts to get in?

A. We went downtown, but that was all.

Q. When you went downtown, did you try to get a permit to get in?

A. Yes; we tried that.

Q. You had already gone downtown after March 11th before this April 5th, hadn't you, and tried to get in?

A. Oh yes, yes.

Q. And you tried after April 5th downtown to get a permit?

A. That is right.

Q. To whom did you talk about that?

A. I talked to Ray and Riley.

Q. What was said at that time?

A. Riley said, "Go and see Ray," and Ray said, "Everything is all right." He told me, "Go and see Riley."

Q. And you did what each of them said about seeing the other?

A. Yes.

Q. What results did that give?

A. That didn't give no results.

Q. Did you ask them what were the reasons?

A. Yes.

601 Q. What did they say?

A. Didn't say anything.

Q. Just stood there and didn't say a word?

A. One would say for me to go to see the other and the other would say for me to go to see him.

Q. Did you see anybody else then?

A. No; there was no use.

Q. You didn't go to see any of the officers of the company?

A. No.

Trial Examiner Ringer: That is all.

Recross-examination

Q. (By Mr. Wachtel) One more question. You testified that you were behind in your dues when you were suspended?

A. That is right.

Q. Did you put yourself back in good standing by payment of dues when you went back to get your permit?

A. No; you see, on Thursday morning we get paid, see. My trial was on a Sunday and they postponed that until the following Friday, and I was to go to work that following Monday morning and the plant was closed down.

Q. But you never paid your money afterward?

A. No; I didn't.

Mr. Wachtel: That is all.

Trial Examiner Ringer: Next witness.

602 (Mr. John Master takes the stand.)

Trial Examiner Ringer: Were you sworn?

Mr. Master: No, sir.

(Mr. Master sworn by the Trial Examiner Ringer.)

JOHN MASTER, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Lodish) Your name is John Master?

A. That is right.

Q. 3954 East 155th Street?

A. That is where I used to be, but I changed my address.

Q. And what is your address now?

A. It is 10102 Lamontier Avenue.

Q. Are you working now, Mr. Master?

A. Yes, sir.

Q. When did you get the job you are now holding?

A. Last Wednesday, a week ago today.

Q. A week ago today?

A. Yes.

Q. That is June 9th?

A. About, yes.

Q. Where was the last place you worked before that—withdraw that. Did you work at the Electric Vacuum Cleaner Company?

A. Yes, sir.

603 Q. What was the last day you worked there? Was it Friday, March 19th?

A. March 19th; that is right.

Q. What was your job there?

A. Polisher.

Q. You were making one dollar and five cents an hour?

A. That is right.

Q. Forty hours a week?

A. Yes, sir.

Q. How much money have you made since March 19th at these various places, to date?

A. One hundred dollars and twenty-five cents.

Q. One hundred dollars and twenty-five cents; is that the total?

A. Total, yes, sir.

Q. Do you have any money coming to you that you have earned but not yet received?

A. From the present place where I am working now.

Q. How many days?

A. Six days.

Q. You have got six days coming?

A. Yes, sir.

Q. How much does that amount to?

A. Well, we run piecework. We don't run the same amount every day. Some days seven dollars and a

604 half, the next day seven dollars and fifty-six cents or so.

Q. Do you know how much you have got coming?

A. I can't figure it out.

Q. Is your present job a permanent or temporary one, do you know?

A. I couldn't tell you that.

Q. If you can get your old job back at the Electric Vacuum Cleaner Company, do you prefer that to the one you now have?

A. I certainly do.

Q. Now, when did you first join a union?

A. About 1924.

Q. Was that the American Federation of Labor?

A. A. F. of L.

Q. Did you belong to that all along?

A. Well, during depression, I was away, but when things picked up I joined again.

Q. So, except for the depression, you belonged continuously until recently.

A. Yes, sir.

Q. How long did you work at the Electric Vacuum Cleaner Company?

A. Fourteen years.

Q. Did you leave the plant March 19th, in the morning?

A. In the morning; yes, sir.

Q. With the rest of the polishers?

605 A. Yes.

Q. Did you join the C. I. O. after that?

A. About March 23rd.

Q. How did you join—at a meeting?

A. At the meeting.

Q. Was that at Arnold's Hall?

A. Arnold's Hall, yes.

Q. What did you do there that leads you to believe that you joined the C. I. O.?

A. Well, I figured we had trouble—

Q. I don't want to know what you figured. What did you do? Did you sign something?

A. I just signed an application.

Q. What did you do about your American Federation of Labor membership, if anything?

A. At that meeting I was still in good standing.

Q. Did you do anything about your American Federation of Labor membership at that meeting?

A. Not that meeting.

Q. You didn't?

A. No, sir.

Q. So that, as far as you are concerned, you belonged to both then?

A. Belonged to both.

Q. Did you ever attempt to resign the American
606 Federation of Labor?

A. No, because I didn't have a chance. They wouldn't let me go back to the factory or anything.

Q. After March 19th, did you try to get back to work?

A. Yes.

Q. All right. What was the first thing you did in that respect?

A. I went down to the business agent and asked for a permit.

Q. When did you go down there?

A. About March 25th or 26th. I couldn't tell you.

Q. What date, do you recall?

A. After the shop re-opened.

Q. After it re-opened?

A. Yes.

Q. The shop re-opened April 5th. That was Monday, April 5th. Did you go down to the shop that day?

A. I did, yes.

Q. Monday, April 5th?

A. Yes.

Q. Did you try to get in the plant?

A. I couldn't even go near to it.

Q. You couldn't go near to it?

A. No, sir.

Q. When did you go down to the Metal Trades?

A. Went there about a week later. About a week after.

607 Q. What was the conversation there? What happened there?

A. I talked to the business agent.

Q. What was his name?

A. Mr. Muehlhoffer.

Q. Yes?

A. He gave me a permit and told me to get an O. K. from the committee.

Q. He gave you a permit?

A. Yes.

Q. What did he give you—a paper of some kind?

A. It was a regular application.

Q. And he asked you to get an O. K. from—

A. From the Committee.

Q. What committee?

A. The Shop Committee.

Q. Then what did you do?

A. The Committee refused. They said the boys refused to work with me in that shop.

Q. Who refused?

A. They had a vote in the factory and the boys decided to refuse to work with us.

Q. Who told you that? Who refused to O. K. your card? What was his name?

A. Mr. Rinehart was on the committee and Mr. Trask.

Q. And was that the end of that?

608 A. That was the end of that.

Mr. Lodish: That is all.

Mr. Carey: No questions.

Mr. Woodle: No questions.

Trial Examiner Ringer: All right. You are excused. We will have a five-minute recess at this time.

(Recess.)

(Mr. Arthur Troyan takes the stand.)

Trial Examiner Ringer: Have you been sworn?

Mr. Troyan: No.

(Mr. Troyan sworn by Trial Examiner Ringer.)

ARTHUR TROYAN, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Testimony of Arthur Troyan

Direct Examination

Q. (By Mr. Lodish) Your name is Arthur Troyan?
A. Yes, sir.
Q. T-r-o-y-a-n?
A. Correct.
Q. 7612 Dix Court?
A. Yes, sir.
Q. Are you working now?
A. Yes, sir.
Q. When did you get the job you are now holding? When did you get the job you are now working on? When did you start working there?
609 A. About three weeks ago.
Q. Now, you worked at the Electric Vacuum Cleaner Company; didn't you?
A. Correct.
Q. What was the last day you were there?
A. March 5th.
Q. March 5th?
A. I think so.
Q. Were you there after the sit-down strike?
A. Yes.
Q. Did you leave on a Friday?
A. Yes.
Q. Was it Friday morning?
A. I went to work Friday morning after the midnight shift.
Q. Yes?
A. We didn't work since.
Q. I see. Well, were you in the plant Friday morning?
A. Yes, I was. I been told come down in the morning.
Q. Did you leave that morning with the rest of the men?
A. Yes, sir.
Q. Were you a polisher?
A. I leave before then. I went home.
Q. You went to work Friday morning?
A. Yes.
Q. And you went home?

610 A. The night shift went home. I don't know what we been called for.

Q. Oh, I see. What you mean: You went to work Thursday night?

A. Yes.

Q. And was that the night of the sit-down strike?

A. That was the last night, yes.

Q. Friday, the day the plant was closed was March 19th?

A. Yes, sir.

Q. And you were there Thursday, March 18th, until Friday morning, March 19th?

A. Yes.

Q. How much money have you made altogether or gotten through any source since that time?

A. I don't know. I got some stubs from Security Corporation.

Q. This is money that you earned?

A. That I earned, yes.

(Witness hands slips of paper to Mr. Lodish.)

Q. Oh, you mean Social Security?

A. Yes, that is correct.

Q. Now, do these papers show all the money you have made since March 19th?

A. Absolutely.

Q. That is eleven dollars and sixty-seven cents; forty-three dollars and sixty-six cents; eighteen dollars and

611 forty-four cents; thirty-five dollars and eighty-nine cents; twenty-three dollars and forty-eight cents; thirteen dollars and eighty-nine cents?

A. And two more yet.

Q. These two (indicating)?

A. Yes.

Q. There is nothing on here.

A. Well, it is a penny for each dollar.

Q. Do these two—are these two different from all of those?

A. These from Westinghouse.

Q. Twenty-eight dollars and twenty-nine dollars?

A. Correct.

Q. And that is all the money you have made to date?
A. That is all.
Q. Have you earned any money that you haven't received yet?
A. No.
Q. Now, you were a polisher at the Electric Vacuum Cleaner Company?
A. Right.
Q. Getting one dollar and five cents an hour?
A. Yes, sir.
Q. Forty hours a week?
A. Yes, sir.
Q. How long had you worked there?
612 A. Last time will be three years in June.
Q. You worked there for three years?
A. Yes.
Q. Did you join a union when you worked there?
A. I was with a Union before I came in.
Q. The A. F. of L.?
A. Right.
Q. How long had you belonged to the American Federation of Labor?
A. Fifteen years.
Q. Fifteen years?
A. Yes.
Q. Did you belong to it all the time up until now?
A. No.
Q. Most of the time?
A. Yes.
Q. What do you mean by most of the time?
A. During the depression I was not in.
Q. Except during the depression you belonged to it right along?
A. Yes.
Q. Did you ever join the C. I. O.?
A. Yes, I did.
Q. When was that?
A. Same time when they had the strike.
613 Q. You remember you were in the plant Friday morning, March 19th?

A. Yes.

Q. When did you join the C. I. O.—after that?

A. Yes, after that.

Q. When? How long after?

A. A couple days after.

Q. Where was it?

A. I just signed application. I didn't belong to it, but I signed.

Q. You signed an application?

A. Yes.

Q. Where did you sign it? At your home?

A. No; it was in a hall.

Q. Arnold's Hall?

A. Yes.

Q. What did you do about your American Federation of Labor membership when you signed the C. I. O. application? Did you do anything about that?

A. No I didn't. My dues was paid up until May 1st.

Q. So that you were a member of both?

Mr. Orgill: We object to that.

Mr. Lodish: I withdraw that.

Q. (By Mr. Lodish) Your dues were paid up in the American Federation of Labor?

614 A. Yes.

Q. And you signed an application with the C. I. O. about a week after the plant closed or a few days after?

A. A few days after.

Q. After March 19th, did you try to get back to work?

A. Yes.

Q. Did you go to the plant April 5th, the first Monday it opened?

A. Correct.

Q. Did you try to get in the plant?

A. Yes.

Q. Did you get in the plant?

A. No; I didn't. They wouldn't let me in.

Q. What did you do after that about getting back to work?

A. I went to business agent; I got an O. K. from him.

Q. You got this (indicating), April 1st, 1937?

A. That is the 12th.

Mr. Lodish: It looks like April 1st; I guess it is supposed to be April 12th.

(Mr. Lodish hands the slip referred to to Trial Examiner Ringer, and the same is examined by the Examiner.)

Q. (By Mr. Lodish) You got this April 12th from Mr. Muehlhoffer?

A. Yes.

Q. And it says on the back here, "O. K. by the Committee"?

615 A. The committee.

Q. When did you get the O. K.?

A. Well, I went see committee, Rinehart, whatever you call him, he was in committee, he come out and told me. He said, "You are not nothing but an agitator." He says, "Get out and stay out."

Q. Did he O. K. this?

A. No.

Q. Who O. K.'d this?

A. Muehlhoffer.

Q. I see. And did Muehlhoffer write "O. K. by Committee"?

A. Yes, sir.

Q. What did he tell you?

A. He said to me, "I doubt that you will go back." He said, "I doubt."

Q. Did he tell you to go see anybody?

A. He told me to see Committee.

Q. So he told you to go and get an O. K. by the Committee?

A. Yes. So the Committee told me I was an agitator and told me to stay out of there.

Q. And Rinehart wouldn't give you an O. K.?

A. No.

Mr. Lodish: I would like to have this marked Board's Exhibit No. 24 and introduced as part of this man's testimony.

(Board's Exhibit No. 24 so marked for identification.)

616 Q. (By Mr. Lodish) You don't want this card, do you? (Referring to Board's Exhibit No. 24.)

A. Sure. Why not? I keep that.

Mr. Lodish: Well, I will have to read it into the record.

Trial Examiner Ringer: You can have a copy made of it.

Mr. Lodish: We will have a copy made and give it back to you if you want it.

The Witness: Certainly. I keep it.

Q. (By Mr. Lodish) Do you mind if the United States Government takes that? (Referring to Board's Exhibit No. 24.)

A. If the Government wants it, he could have it.

Q. All right then, we will keep it to go to Washington.

A. All right.

Q. Did you try to get a card before April 12th before you got that?

A. No; that is the first I got.

Q. Did you have any meetings with your C. I. O. group before April 12th?

A. Yes.

Q. Was anything said at those meetings about your going back to work?

A. They told us supposed to be, they went out to make some kind of contract with Federation and C. I. O., so we all go back to work without any discrimination.

617 When Monday come, they open the plant and you can't get into it.

Q. Who told you about this so-called contract?

A. C. I. O. leaders.

Q. C. I. O. leaders at your meeting?

A. Yes, sir.

Q. And told you to go back Monday?

A. Yes.

Q. Is that the Monday of April 12th?

A. Yes.

Q. And then you got this (referring to Board's Exhibit No. 24)?

A. Yes.

Q. But you couldn't get it O. K.'d by the Committee?

A. No.

Mr. Lodish: I now offer in evidence Board's Exhibit No. 24.

Trial Examiner Ringer: Admitted.

(The card referred to was received in evidence and marked "Board's Exhibit No. 24, Witness Troyan.")

Q. (By Mr. Lodish) Did you try any more after April 12th?

A. No; I didn't, because they told me I should not come around to the plant.

Q. Who told you that?

A. I don't know. Some fellow, strange fellow standing at the gate.

618 Q. At the gate?

A. I ever seen him before.

Mr. Lodish: That is all.

Trial Examiner Ringer: The usual procedure on questioning.

Mr. Carey: No questions.

Mr. Spieth: No questions.

Mr. Woodle: No questions.

Trial Examiner Ringer: I would like to ask a question.

Examination by Trial Examiner Ringer.

Q. (By Trial Examiner Ringer) Those words "O. K. by Committee" on the back of Board's Exhibit No. 24, who wrote that on there?

A. Muehlhoffer.

Q. Did he write that on there at the time he told you to go to the Committee and get it O. K.'d?

A. Yes.

Trial Examiner Ringer: That is all. Next witness.

Mr. Lodish: At this time, Mr. Examiner, apparently we have no more men present. There seem to be three or four left who can not be reached, except overnight. They have no phones and they can't be here until tomorrow morning. Some of them may not show up. I understand at least one is no longer interested and I understand at

least one is back at the plant, has been hired since the
619 complaint was made or since the amended complaint was made. I have sent Mr. Lowrence to get the application cards and he said it would be about a half hour. It is now about twenty minutes or so and I think, after introducing the application cards, subject to the call of whoever else is left of these twenty-six, that we rest our case except for one matter. As long as I have the opportunity now, I would like to go into it and see if we can arrive at some happy solution. Now, at least one man named in the twenty-six has been rehired, presumably after the amended complaint was filed. Several men may have been rehired immediately before the complaint. There has been apparently a hiring of men from April 5th, more or less, to date. Now the amended complaint in Paragraph Ten alleges a refusal to reinstate several hundred men on April 5th, and that thereafter new men were hired and old men were taken back at various dates, and that in the end certain men were never taken back. Now the complaint as originally filed named nobody. There were no names, just figures. Five hundred and fifty men, fifty men, and so forth. A motion was filed asking for the names of those who have never been taken back, and in conformance with that motion, an amended complaint was filed naming those men. Now, there may be perhaps one hundred or one hundred and fifty who were taken back at various times from April 5th to date. Two of those men have been on the stand: Mr. Boyse and some body else. Mr. Boyse, I think, stated
620 that he lost three weeks work. Now, you can see, of course, that it becomes quite a complicated matter, if it is introduced in this case. I can say that I discussed it with Mr. Spieth, or, rather, asked him what his attitude was, whether we could stipulate something here, and he told me that the company's position was that they took the men back just as soon as they could, and apparently there would be an explanation for each case. If a man was not hired, for a week or two after the plant's re-opening, there may be a specific defense to his case. So it boils down to apparently one hundred individual cases, disregarding the ultimate question of law, whether they have a case or not.

Now, my suggestion would be this: that we take notice of that situation, stipulate that this case does not prejudice those men in any way; that everything else go to final hearing, and that the situation of all those men who were not reinstated immediately but were reinstated at some future time, be kept separate for a future ancillary determination if and when it becomes necessary. Otherwise, of course, I see no alternative under the Act than to produce the men one after the other and to get their full testimony into the record. I see no harm in this type of procedure because they are all working. Whatever claim they have has already been passed; it is not accumulative or accruing, and I would respectfully suggest that some such procedure be adopted at this time.

Trial Examiner Ringer: Of course, such a pro-
621 cedure would be entirely satisfactory with the Trial Examiner. I do not know what is the attitude on the part of counsel.

Mr. Lodish: I might add one word: To be perfectly fair, I can see where the amended complaint, as drawn, might have been just a bit blind to the respondent's counsel. Although it is in the complaint, the allegation that certain men were not returned when the plant opened, counsel for respondent may have felt that that was not an issue; that the sole issue was just the twenty-six men, and perhaps filed a motion under that understanding. Of course, neither the Board, myself, nor the amended complaint is bound by an understanding of that kind. However, I wish to state that that also is involved in my suggestion; that if there has been any element of surprise on the part of the company, and they have not had adequite time to prepare their case in that respect, the suggestion also takes care of that particular difficulty.

Trial Examiner Ringer: You feel that the matter of back wages for these various men who are not included in the twenty-six is an issue in this case. In other words, according to your theory, this proceeding is one brought in merely to cause these twenty-six men to be reinstated and have their wages paid from the time of their discharge until whatever date they are offered reinstatement, but also

to include the wages for the men who weren't taken back for the period in which they were off; is that your view?

622 Mr. Lodish: Of course, the answer to that, Mr. Examiner, is this: That was the intent of the charges filed. The Union filed charges as a representative of a large group. Not just of twenty-six men. There are hundreds of men involved. That is why you have a "C" case and an "R" case, and the answer to your question specifically is this: If anyone of these twenty-six men should be hired tomorrow, and from then on have a permanent job with the company, the only difference between that particular man who is hire tomorrow and the man like Mr. Boyles, who was hired a few weeks ago, is that one man has been out of work longer than the other. The sole exception being that some of these men may never be called back to work. They may be in the near future, for all I know. The others have been called back.

Trial Examiner Ringer: May I hear from the Respondent on this?

Mr. Spieth: Do I get from Mr. Lodish's statement that it is claimed under this complaint that back pay is being asked for all of the men that didn't get back to work on the 5th day of April?

Mr. Lodish: I will answer that; "Yes" is not the proper answer to it. The answer is this, Mr. Examiner, if you don't mind. You will find nowhere in the amended complaint any request for back pay. The complaint does not ask for any remedy of any kind. It merely states the

623 charges. The charges are that the plant closed and opened under certain circumstances. It doesn't ask for back pay for the twenty-six men, or that they be reinstated. It merely states that such things happened. Then the case goes ahead and whatever the Board finds is necessary, that is their decision. So far as this case is concerned, we have got to put all the facts in for the Board to decide.

Mr. Spieth: I appreciate that. Nevertheless, the Board makes a recommendation, and what I want to know is whether it is your purpose to make a recommendation to the Examiner under this complaint that back pay be con-

sidered for these men during the time that elapsed between the 5th of April and the time they were employed?

Mr. Lodish: I make no recommendation.

Mr. Spieth: I mean that the Board does not reach out of a clear sky—

Trial Examiner Ringer: Of course, that is what the Board may do. The Trial Examiner makes whatever recommendations he thinks appropriate on the findings of fact. But your question really is to Mr. Lodish: Are you presenting your case on the theory that that may be the result?

Mr. Lodish: I am advising counsel that that result is possible. It has nothing to do with any theories of mine.

Mr. Spieth: Now, if we may look at Paragraph Ten in the original complaint: "The Respondent, on April
624 5th, while engaged at the plant as above described, did refuse to reinstate about five hundred and fifty employees, and each of them, all of whom were employed by the Respondent at the plant on or about April 5th, and at various times thereafter the Respondent did employ in its Production and Maintenance Departments certain persons not theretofore employed by respondent in said departments and did recall to employment certain of the five hundred and fifty employees who had been required to cease work as aforesaid, but on or about such date, and at all times thereafter, failed or refused to recall to employment about fifty of the five hundred and fifty who had been required to cease work as aforesaid, and has thereby discharged said employees and each of them." I submit that, on a fair reading of that, that the charge relates principally to fifty men who were not taken back. Then a motion was filed asking that that paragraph be made more definite and certain. "For cause of said motion, Electric Vacuum Cleaner Company, Inc., respectfully urges, unless it is definitely informed of the identity of said employees referred to in Paragraph Ten of the complaint, who it is alleged, were not recalled to employment, and were thereby discharged, it cannot properly draft its answer to the complaint or prepare for and safely proceed to trial." Thereupon the Government's complaint is amended, and twenty-

eight men are named. Now, I submit that the issues
625 under the complaint and the way the answer is prepared are drawn to meet the situation with regard to twenty-eight men for whom a specific claim is made, and if there is any intention on the part of the Government of urging anything different than that, I think we should be advised and advised very promptly.

Trial Examiner Ringer: If that is your view of it, then you have no objection whatever to entering into a stipulation of the sort suggested by Mr. Lodish, that there would be no evidence introduced specifically as to the other men, and that that be a matter reserved for further proceedings, if necessary or desired, or in any way further the proceedings in and part of this original matter.

Mr. Spieth: No, your Honor. If we are going to proceed with this, we are going to proceed with it at any time. I can't see any purpose in reserving from consideration the part of the case that may have to it what this has.

Mr. Lodish: I made the suggestion. Perhaps I took too much time. Of course, the short answer is "no." We are prepared to go ahead naturally. All I want to call your attention to is this: "The first sentence in Paragraph Ten of the amended complaint: "The Respondent on April 5th, while engaged at the plant as above described, did refuse to reinstate about five hundred and fifty employees and each of them." The first sentence in Paragraph Ten of the answer to the amended complaint. It denies that
626 on April 5th, 1937, it refused to reinstate about five hundred and fifty employees. Now, it is perfectly obvious that that is an issue in the case. We allege that five hundred and fifty men were refused reinstatement. They denied it is an issue. If we have to try it here, we will try it here. I frankly made that suggestion chiefly as a favor to the Respondent, because he got the impression during this hearing that this was something in the nature of a surprise to Respondent's counsel, but it is obvious from the first sentence in both the amended complaint and the answer in Paragraph Ten, that there is an issue in this case as to whether or not the Respondent refused to re-employ five hundred and fifty men on April 5th. If they did or

didn't, that is an issue, and whether some men were put back a day later, a week later, or a month later, is a matter in litigation for the Respondent to cut down the testimony.

Mr. Woodle: In view of the fact that we are not directly concerned with Mr. Lodish's charge here, but we are concerned with the amount of time consumed in this hearing, I want to suggest to the Examiner that a single sentence be picked out of the charge. You can't pick the first sentence out of that charge and say that that is the charge, because in the latter part of that same paragraph it refers to these specific employees, later amended to be fifteen instead of fifty. That same fifty employees is the subject of the five hundred and fifty referred to in the first sen-
627 tence. You can't pick that sentence out and say it is the charge. It is all in one paragraph and must be read together.

Mr. Lodish: The distinction between the first part of the paragraph and last part is that the last part concerns the few who were discharged. The first part concerns the people who were not discharged but were merely kept out for an indefinite period of time. You can't say that five hundred and fifty men were discharged, because they weren't. They were called back to work. They were off for a week or two. That paragraph divides itself up into two branches: Those few who never got back and those many who were not discharged but who did get back.

Mr. Woodle: Then it is your contention that this paragraph doesn't contain one charge but two charges, and they are embodied in the same paragraph but they are intended to be different things.

Mr. Lodish: Mr. Woodle, I can point to another paragraph in this complaint that embodies a dozen charges, if you want to see it.

Trial Examiner Ringer: There is nothing with respect to that, any way, because certain facts are set out.

Mr. Lodish: It is not my desire to prejudice anybody's case or to prejudice the right of any party in interest, whether it be the C. I. O., American Federation of Labor, or the Electric Vacuum Cleaner Company. If it is the
628 pleasure of the people here that we go ahead, it is cer-

tainly all right with me.

Mr. Griff: This affects the individual members of our local, and to carry out the thought of Mr. Woodle, at the time the amended complaint was filed there was twenty-eight. Now, at this time, there is less than twenty-eight. Probably if this hearing would come up next month, there might be less than twenty-eight or more. It is very evident that half of those who lost any employment for the reason of not being called back to work April 5th—It is our contention at least that those men were discriminated against, and part of that discrimination is loss of wages. It is set up very clearly in Paragraph Ten of the amended complaint, and we expect the Board to make a finding when this case is finally determined.

Mr. Lodish: I think the record will show that the first day of this case I made comment on the fact that there were a group of about one hundred and fifty whom we might have to subpoena under certain eventualities, and asked that we get cooperation to the extent of calling these people, if necessary, without subpoenas. I suggested at that time that I would like to see that group considered apart from the main issues in this case. The main issues being those central questions that underly the whole thing. I think I stated at that time that if one side wins, there is no
629 difficulty about that. That, if the other side wins, that there might be a lot of ancillary questions and it might be wise to put those aside until we know what the final decision is; that we might not have to discuss that.

Trial Examiner Ringer: I recall that. Of course, it was not as clear to the Examiner or counsel as it is now.

Mr. Lodish: I attempted at that time—I have no desire at any time to deceive anybody, and I attempted to make that position clear at that time, and I reiterated it at this time.

Mr. Spieth: If you are urging that claim, we are prepared to proceed.

Mr. Lodish: All right.

Trial Examiner Ringer: Of course, there is nothing to do but proceed, I suppose then.

Mr. Lodish: May I ask: Will we be able to get these

people in by telephone call one after another instead of subpoenaing the whole group?

Trial Examiner Ringer: I don't know whether these witnesses have been brought in under that same system yesterday and today, but it has worked very splendidly.

Mr. Lodish: We only have two or three that were called up. The others were out of work. I treated them separately.

Trial Examiner Ringer: Well, you might as well dive in and go ahead then.

Mr. Lodish: I am still waiting for Mr. Lowrence
630 to get back. Can we have a few minutes intermission?

Trial Examiner Ringer: Yes.

(Recess.)

Trial Examiner Ringer: Proceed.

HOWARD LOWRENCE, being recalled, further testified as follows:

Direct Examination

Q. (By Mr. Lodish) You have testified already in this hearing; have you not, Mr. Lowrence?

A. Yes, sir.

Q. And you are the Secretary of Local No. 720?

A. Yes, sir.

Q. Is that just Secretary?

A. Financial Secretary and Treasurer.

Q. Now, there has been introduced into the record a blank card purporting to be an application for membership in the United Electrical and Radio Workers of America, and upon its introduction there was some question about whether there was in existence signed applications. Now, did you have in your custody a number of applications signed by employees of the Electric Vacuum Cleaner Company?

A. I have.

Q. And did you, at my request, bring those with you here?

A. I did.

Q. And this bundle of applications is that group (indicating)?

631 A. That is the group.

Q. Now, were these applications solicited by various people?

A. They were, some of them, and some of them were signed at meetings.

Q. Now, did you, at any one occasion, have all of these applications at one time at a meeting?

A. Not all at one time at a meeting, no.

Q. How many applications did you get altogether?

A. There was six hundred and twenty-three altogether.

Q. And how many did you bring with you?

A. I have with me five hundred and seventy-three.

Q. Where are the balance?

A. I do not know. They disappeared from the office.

Q. These five hundred and seventy-three, to the best of your knowledge, are all employees of the Electric Vacuum Cleaner Company?

A. They are.

Mr. Lodish: Mark these for the purpose of identification as Board's Exhibit No. 25.

(Board's Exhibit No. 25 marked for identification.)

Mr Lodish: I now offer for the Board's inspection what purport to be signed applications for the United Electrical and Radio Workers of America which have come from the custody of the witness now on the stand, who is their Financial Secretary and Treasurer. I offer that

632 for whatever it may be worth in this hearing.

Mr. Carey: For the benefit of the record, we would like to ask that the contents and names of those applications not be made public. That its contents just be used for the benefit of the Board.

Mr. Orgill: Don't we have an opportunity to inspect those applications?

Trial Examiner Ringer: Certainly you do if they are admitted.

Mr. Orgill: That would be a very strange procedure.

Mr. Lodish: As I said before, it has been the policy of the Board to allow exhibits in for two different sets of circumstances. If they are in for the purpose of proving a majority, they are then, of course, subject to examination and full inspection. They can, however, be introduced merely for the purpose of showing a question affecting representation without in itself proving a majority, and the Board has allowed applications under those circumstances to be turned in, in confidence, merely for the Board's inspection, because of various conflicts that arise. I presume from the statement made by Mr. Carey that he intends to offer of these to be restricted to the Board's examination and thus restricted to the question affecting representation and not as proof in themselves of the majority at that time.

Trial Examiner Ringer: These are being offered by you?

633 Mr. Lodish: They were offered by me because of colloquy that arose. However, they were taken from the custody of the C. I. O. Union and, of course, they are their confidential records and, of course, I have no disposition to treat those records any differently than they themselves wish them treated.

Trial Examiner Ringer: But you, being in charge of this case, of course, you would have to indicate the purpose for which you are offering them as Board's Exhibit No. 25?

Mr. Lodish: Yes; I indicated that earlier in the hearing. Board's Exhibit No. 25 is being introduced for the purpose of filling out the evidence in this case. There are various lists that were introduced, two of which, or one of which you refused admission because it was not the best evidence. The list that was taken from these applications. And we went back step by step. This is the last step in filling out that evidence. It is being introduced for the purpose of completing the record, and also for the purpose of showing that a question affecting representation has arisen. I do not introduce them for the purpose of showing that they had a majority, to that extent that the Board

can certify that they represent a majority without further investigation or proceedings.

Mr. Woodle: Are they introduced for any evidence on the question of majority? Are you regarding them as some evidence as to the question of majority?

634 Mr. Lodish: No.

Mr. Wachtel: I would like to know specifically for what purpose they are being used.

Mr. Carey: They are being used because the counsel requested the best evidence. If we are basing our claim on majority representation on the application cards, they would be open to be looked into and compared with the list of employees in the plant. We have no objections for the Board to view these things in the presence of their company, but the fear of blacklisting of the American Federation of Labor Union prevents us from disclosing our membership list. In accordance with the procedure of the Board, unless it is used for the purpose of securing a majority, this should not be made public.

Mr. Orgill: Then you are offering this under gag rule. We are to be gagged and we have no right to go into them at all?

Trial Examiner Ringer: Please make your comments to the Trial Examiner.

Mr. Wachtel: I would like to point out to the Board through you, that the Act, the purpose, the intent, and the wording of the Act, do not cover any interunion battles. They are not intended to. And any evidence adduced in a "C" case between the Union, that is complaining, and the company cannot settle in the "C" case any discussion of any objections that have been raised by the two

635 unions. That is not the purpose of the Act and we object to the introduction of these cards in this complaint unless we have the right of inspection and we have a certainty for what purpose they intend to be used.

Mr. Griff: If your Honor please, I would like to make a few remarks. It is my opinion that these cards do not concern the American Federation of Labor at all, for this reason: This is a complaint filed with this Board here, and the Board is only interested in one phase of the matter:

Who has any representation and what that representation is. Now, a charter was introduced and evidence was introduced that there were certain members affiliated under that charter. Now the genuineness of those cards, the Board has the means of determining that from the payroll records of the company, and the only one that is concerned about the genuineness of these cards is the Board. The other Respondents—by that I mean the five Locals—have no interest in this matter from the complaint standpoint, and for that reason we ask strict confidence as to the identity of those names be kept by this Board.

Trial Examiner Ringer: Board's Exhibit No. 25 will be admitted. I will reserve ruling on the question of the confidential aspect of it until tomorrow morning. Proceed.

(The papers referred to were received in evidence and marked "Board's Exhibit No. 25.")

Mr. Lodish: That is all.

Mr. Carey: No questions.

636 Mr. Orgill: Do I understand now that we can't use those cards for the purpose of cross-examining the witness?

Trial Examiner Ringer: Not until tomorrow morning.

Mr. Orgill: All right. Then we will reserve our cross-examination until tomorrow morning.

Trial Examiner Ringer: Of course, you can cross-examine on any other angle.

Mr. Lodish: You can use one card to cross-examine for the time being. This top card is Mr. Arthur Kruse, who has testified, if you want to cross examine as to the general—

Mr. Orgill: We will wait until we get a ruling.

Trial Examiner Ringer: I will permit you to defer cross-examination with respect to Board's Exhibit No. 25 until such time as I make a ruling on the confidential relation question here.

Direct Examination (Resumed)

Q. (By Mr. Lodish) As Financial Secretary, Mr. Lowrence, were you active in preparing the evidence for this hearing?

A. I was.

Q. And did you consult people who are back to work at the Electric Vacuum Cleaner Company as to whether they wished their rights presented to the Board?

A. I did.

Mr. Spieth: I object unless there is some definiteness to that question. Just whether they wanted their
637 interests looked after here—

Trial Examiner Ringer: Will you read the question, please?

(Last question read by the Reporter.)

Mr. Lodish: I will withdraw that.

Q. (By Mr. Lodish) Did you, in connection with your work, contact individual employees who had originally joined the C. I. O. and then returned to the American Federation of Labor and returned to work?

A. I did.

Q. Did you ask any of these employees whether they wanted to be a party to this case, and perhaps get back pay if it would be awarded?

Mr. Wachtel: I object to that question.

Mr. Woodle: I think the rights of the parties should be fixed, at least at the time the complaint is filed. People have a right to change their minds from day to day, and rights should be determined at the time.

Trial Examiner Ringer: It seems to me the question is immaterial anyway, Mr. Lodish, because if a complaint is filed here on behalf of a labor organization, then if the facts come out, the Board has jurisdiction to make whatever order it thinks wise under the circumstances, if it makes any.

Mr. Lodish: There was a question asked and I
638 was trying to determine it for their satisfaction. I don't care. I will withdraw that line of examination.

Trial Examiner Ringer: If, for example, just thinking out loud in the matter, if every man involved here would change his mind afterward, that would not in any way deprive the Board of authority to make whatever order for their benefit at least to require the company to offer to pay them, if the evidence was such that it required that

order. Of course, every individual could refuse to take it if he wanted to. I will sustain the objection to that question. It seems to me immaterial.

Mr. Lodish: In view of the facts that we are here to stay a while, I have some names and addresses that I can start off on and request the management to ask some of these people to be here tomorrow. Now, would you have any suggestion, Mr. Examiner, as to how many I ought to ask for at one time?

Trial Examiner Ringer: You are referring now to certain of the alleged five hundred and fifty?

Mr. Spieth: If your Honor please, I should think some time along here we should be advised as to what claims they are going to make and for what parties. Now this list may grow and grow and grow and grow. We started with fifty, which was cut to twenty-eight. Now, we are back going up to a hundred or more. We don't know. I think for the benefit of all parties that there should
639 be some list that they decide on and when that list is brought up we can raise our objection to it, and I think I can argue the question as to whether I believe they are entitled to call these parties.

Mr. Lodish: I think that is a fair comment. My sole purpose in giving a few names now was so we would not find ourselves in the morning with nobody here, because I didn't understand that I would have to issue any subpoenas. Now I will have a list, I believe. I will try to have a list tomorrow morning of the entire number. However, I would like to repeat that it might be advisable to get ten or fifteen names now to start off with tomorrow morning.

Mr. Gordon: May I have a word, please?

Trial Examiner Ringer: Certainly.

Mr. Gordon: A gentleman made a remark a little while ago about the American Federation of Labor Unions blacklisting and all that. Now, before you go into this matter here. I know that my group in there, the machinists section, had a meeting with them Friday night. Now, I know the feeling in that plant, at least in my group, and each representative knows the feeling in their groups. Now,

with what right, while I represent those members and they are paying dues to me, does a third party want to interfere in my case, and why should you prevent these men from working his day's work, and calling him out here? We have an agreement covering those conditions. In fact, we had it since 1935, July. The last agreement that is
640 signed in there, it was approved by a majority of nine hundred.

Trial Examiner Ringer: Now you are going into facts that have no bearing on this whole case.

Mr. Gordon: I beg your pardon.

Trial Examiner Ringer: And it is something that I couldn't pass on now. If that is a part of this case now the Regional Attorney is entitled to bring here, either under subpoena or by consent, whatever employee witnesses he feels are necessary or wise to make his case, and under those circumstances, of course, these witnesses will have to come either under subpoena or by request.

Mr. Gordon: That is perfectly all right, but the matter of fact is this: I want to know if you gentlemen believe in any agreements. Do you believe in a signed contract?

Trial Examiner Ringer: Now, that is not a fair question to raise at all at this point. All that depends on the facts in this case.

Mr. Gordon: That is exactly what I want to bring out.

Trial Examiner Ringer: That will be decided when this case is decided, whether under the circumstances from all the facts here certain relief can be granted.

I can't decide this at this time.

Mr. Gordon: Then why not go back to 1935 and let us have the facts, if we did have an agreement in 1935.

Trial Examiner Ringer: You will have an oppor-
641 tunity to bring all the facts that you want to.

Mr. Gordon: When you attorneys are ready to bring your side of the case. I object to having my members being dragged all over this thing here. They haven't told me anything at that Friday meeting.

Trial Examiner Ringer: We will hear from them when they get on the stand.

Mr. Lodish: All that Mr. Gordon is now saying was

embodied in my suggestion that we leave this group until the big issues are decided. He just said, "Why drag my men in here until we know whether they have rights or whether they haven't"? That was my suggestion, but it was not agreed to and there is nothing further than can be done about it. I don't want to drag them here.

Trial Examiner Ringer: I suggest that you give the names of approximately fifteen for tomorrow, and I think, in fairness to Respondent and other counsel, that a list of the entire group, the entire list relied on, ought to be submitted to them at the earliest opportunity. Now, Mr. Spieth has indicated indirectly, if he had felt that these parties were to be considered individually in this case, he would have filed a motion affecting them, similar to the motion he filed for the 28th? Under the circumstances, I think that list would cover that ground. You indicated that yourself.

Mr. Lodish: Of course, such a list was submitted
642 to us in the early part of the case.. We have kicked it around a little bit, but I think we can put it together. Shall I read fifteen names and addresses now?

Trial Examiner Ringer: Yes; I think that would be all right, or else just turn that over to whatever parties are going to call those witnesses to have them here tomorrow. I don't know that it necessarily needs to go into the record or not. I doubt it.

Mr. Lodish: The Reporter will have to have the names and addresses anyhow. This will make it simpler for him. I can spell them in.

Trial Examiner Ringer: All right.

Mr. Lodish: Elmer Ledinski, 3424 East 72nd Street; Josephine Yonkovic, 692 East 160th Street; Joe Gregorcic, 15800 Holmes Avenue; Louis Gregorcic, 15800 Holmes Avenue; Edwyne Moss, 10816 Orville; Andrew Mielke, 953 East 144th Street; Edward Zielasko, 8022 Bellview Avenue; Eugene Nigro, 10504 Hudson Avenue; Virgil Coleman, 5032 Pershing Avenue; Eva Schinness, 9401 Hough Avenue; Tony Klemencic, 15800 Holmes Avenue; Tom Pojestko, 3228 St. Clair Avenue; Joseph Smith, 4303 East 122nd Street; Edward Maruna, 12701 Lenacrave Avenue;

John Maruna, 12761 Lenacrave Avenue. That completes the fifteen, and I just thought of something else that may lead to a solution here. Would it be possible to work out an agreement without calling these men if we put into the
643 record something from the payroll records of the company showing that whatever the list is—that I give them the one hundred men, let us say, the last day they worked and the first day they were rehired. That is practically all I want to know of these people: What was the last day and when were you hired? Were you out two weeks or three weeks, and so forth. Now, of course, that will still leave the question of attempts to get back to work. Maybe we could work that out by letter of each person. I would like to do whatever is reasonably feasible in this case. If that leads to anything, I offer that suggestion.

Trial Examiner Ringer: Of course, I don't want to hear any of this any more than any of you want to present it to me. If it can be done satisfactorily with the counsel, it would please me greatly. There is, of course, the right of cross-examination on each one of them, if counsel wishes.

Mr. Lodish: Of course, there is no cross-examination in the world that can change the fact that they worked on a certain day and didn't work until another day. That is their own records. The only point is what efforts have these men made to go back to work. Of course, the evidence is pretty clear that they all did about the same thing.

Trial Examiner Ringer: Well, there is also the question of what they received in the interim. Some of them may have made as much as their salary during the interim.

644 Mr. Lodish: If they were given two questions to answer right there without coming to the hearing—whatever is agreeable to everybody is certainly agreeable to me.

Trial Examiner Ringer: I command counsel on both sides if they can agree on anything, and I will be glad to approve it. Of course, it is no duty of mine or even propriety to indicate how it must be done, in a situation of that sort.

Mr. Lodish: No. Of course, it is just a matter of agree-

ment so we can work this out to have the least possible amount of bulk in the record. That was the sole purpose of my remarks.

(Discussion off record.)

Trial Examiner Ringer: Gentlemen, we contemplate adjourning at this time until ten o'clock in the morning. Are there any comments before we adjourn bearing on light rather than heat?

Mr. Woodle: May I ask Mr. Lodish whether outside of this list of names being subpoenaed for the specific purpose he mentioned, whether there is any other evidence the Board will have to offer on either the "C" or the "R" case. Are both cases being tried together now?

Mr. Lodish: This completes the "C" case, and going into the "R" case. We have nothing further.

Mr. Woodle: You have nothing further?

Mr. Lodish: All we have is just the parade of
645 men to find out how much money they made during that interval and how long the interval was. That is all. Just for the purpose of the record.

Trial Examiner Ringer: Have you completed your twenty-eight or twenty-six?

Mr. Lodish: No. There are three or four of those men left yet. Outside of those men, there is nothing further we have.

Trial Examiner Ringer: We stand adjourned then until ten o'clock tomorrow morning.

(Thereupon, at 4:10 o'clock P. m., an adjournment was had to Thursday, June 17, 1937, at 10:00 o'clock a. m.)

646 Room 2, New Court House,
Cleveland, Ohio,
Thursday, June 17, 1937.

The above-entitled matter came on for hearing, pursuant to adjournment, at 10 o'clock a. m.

Before:

William P. Ringer, Trial Examiner.

APPEARANCES:

Harry L. Lodish, Regional Attorney, on behalf of the National Labor Relations Board.

L. C. Spieth and H. A. Spring, 1568 Union Trust Building, Cleveland, Ohio, on behalf of the Electric Vacuum Cleaner Company, Inc.

Sam H. Griff, 610 Public Square Building, Cleveland, Ohio;

James B. Carey, 1133 Broadway, New York, New York, on behalf of United Electrical & Radio Workers of America, Local 720.

Edwin F. Woodle and Bernard Wachtel, 318 Leader Building, Cleveland, Ohio, on behalf of A. F. of L. Affiliated Unions.

John H. Orgill, 1000 Guarantee Title Building, Cleveland, Ohio, on behalf of Cleveland Federation of Labor.

647 PROCEEDINGS.

(The hearing was resumed at ten o'clock a. m., pursuant to adjournment.)

Trial Examiner Ringer: Are you ready, gentlemen? At this time, the Trial Examiner is going to change his ruling on the admission of Board's Exhibit Number 25 and sustain the objection to the admission thereof in so far as it applies to the "C" case which we are now trying.

Mr. Lodish: That is, the cards?

Trial Examiner Ringer: Yes, the application cards; they will be excluded.

Mr. Orgill: That is excluded, is it, on the theory that it is offered with the—

Trial Examiner Ringer: They are excluded now.

Mr. Orgill: What?

Trial Examiner Ringer: They are just excluded from evidence in the "C" case.

Mr. Orgill: What I was getting at is the discussion that they were offered, but we would not have the right to examine them.

Trial Examiner Ringer: Of course, this goes beyond that.

Mr. Orgill: That was the basis of the objection. The exclusion now takes care of it.

Mr. Griff: I would like to ask your Honor—

Trial Examiner Ringer: Before you do, maybe
648 we better get the window shut, or I can't hear you. We are ready to go ahead.

Mr. Lodish: I have a document that is being examined. Will you mark this as Board's Exhibit No. 26 for identification?

(Board's Exhibit No. 26 so marked for identification.)

Mr. Lodish: Mr. Examiner, I am holding what has been marked Board's Exhibit No. 26. It is a mimeographed or multigraphed copy of a notice dated Cleveland, Ohio, March 31st, 1937, to employees of the Electric Vacuum Cleaner Company, announcing a meeting to be held Friday, April 2. This was very widely circulated and I have in my possession a number of them and I believe it is agreed by all counsel here that that is the fact, that this particular notice was widely circulated and may be introduced without any particular witness.

Trial Examiner Ringer: Is that correct, Mr. Spieth, and counsel for the Union?

Mr. Spieth: Speaking for the Respondent, of course, I don't know about that notice; I have to be governed by

what the American Federation of Labor counsel says.

Trial Examiner Ringer: You have no objection to it?

Mr. Spieth: No.

Trial Examiner Ringer: It will be admitted.

Mr. Lodish: Now, with one exception which I am going to mention, that concludes the "C" case. I will withdraw that last remark. I still have a few of the 28th.

649 There are three or four men, and I will put them on one after another.

Mr. Spieth: Have you any idea how long that will take? I want to arrange to get some witnesses.

Mr. Lodish: I am just asking about three or four questions. Maybe a half hour altogether. It is cumulative.

(Discussion off record.)

Mr. Lodish: Mr. Examiner, I am advised that we have a few items here which complete Mr. Carey's testimony as to the charter. I would like to put him back on the stand and have these admitted.

Mr. Spieth: May I see those, please?

(Mr. Spieth and Mr. Woodle examine certain documents handed them by Mr. Lodish.)

Mr. Lodish: Mark these as the Board's Exhibit. Make one exhibit out of them.

(Board's Exhibit No. 27 so marked for identification.)

JAMES B. CAREY, the witness being recalled, further testified as follows:

Direct Examination

Q. (By Mr. Lodish) Mr. Carey, you testified that you were General President of the United Electrical and Radio Workers of America?

A. Yes, sir.

Q. And that Mr. Julius Emspak is Secretary?

A. Yes, sir.

Q. And that James Pascoe is an organizer?

650 A. Yes, sir.

Q. And in that connection, then, in your organi-

zation, they are assistants to you in connection with the administration of your work?

A. Yes, sir.

Q. And you testified that as General President you had something to do with the issuance of a charter to Local No. 720?

A. Yes, sir.

Q. Now, did you bring with you any correspondence relating to the physical issuance and transportation of that charter?

A. Yesterday when the question arose—

Mr. Orgill: Now, we don't want a speech, and I object to it.

Trial Examiner Ringer: There has not been any speech yet or the objection would be sustained. Overruled.

A. The question arose and I telephoned the New York office and requested that they send the application for the charter, and they sent it and it arrived here this morning.

Q. (By Mr. Lodish) Now, I hand you what has been marked for the purpose of identification as Board's Exhibit No. 27 and ask you if that is part of what you received in response to your request of the New York office?

A. Yes, sir, it is.

Q. And one is a copy of a wire, April 1st; another
651 one a copy of a wire, April 2nd; and a third a copy of a letter, April 2nd?

A. The first is the original telegram received.

Q. Oh, I beg your pardon. The other two are copies?

A. Yes, sir.

Mr. Lodish: I offer Board's Exhibit No. 27 as part of Mr. Carey's testimony.

Mr. Orgill: We object, if the Court please.

Trial Examiner Ringer: On what grounds?

Mr. Orgill: It is not competent evidence. Something sent to him that he does not know anything about except hat it came from the New York office this morning, and in he next place it is not the proper way to prove a tele-ram if it be authentic, and that is not the proper way to rove a letter, if it be authentic. There is no excuse of-

fered why the originals are not here. Now, they offer something that comes from somewhere. How it has been kept we don't know. Why it is here, we don't know. Except that he says he wired for it and got it, which I submit is not competent.

Mr. Woodle: It does not seem to be an application for the charter. For that reason, we object.

Trial Examiner Ringer: Your objection would be probably well taken in a civil action. Under the more liberal rules of the administrative board, it will be overruled. Admitted.

Mr. Lodish: That is all.

Trial Examiner Ringer: Any cross-examination?

652 (No response.)

Trial Examiner Ringer: Next witness.

(Rudolph Rummel takes the stand.)

Trial Examiner Ringer: Were you sworn?

The Witness: No.

RUDOLPH RUMMEL, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Lodish) Will you state your full name and address, please?

A. Mr. Rudolph Rummel.

Q. What is your address?

A. 14720 Hale Avenue.

Q. Are you working now?

A. Yes.

Q. You say you are working now?

A. I am working now.

Q. Are you working at the Electric Vacuum Cleaner Company?

A. Yes, sir.

Q. Oh, you were called back to work?

Mr. Orgill: We object to the interjection.

Mr. Lodish: I will withdraw that.

Q. (By Mr. Lodish) When did you go back to
653 work at the Electric Vacuum Cleaner Company?

A. I believe about three weeks ago.

Q. Do you remember the day of the week it was; can you place it—there is a calendar there—can you place it definitely? Today is June 17th.

A. I think it was around the 24th.

Q. About May 24th?

A. Yes.

Q. When did you last work at the Electric Vacuum Cleaner Company before that?

A. Just before the strike I worked about three or four weeks.

Q. What was the last day you worked there?

A. It was on Thursday.

Mr. Spieth: I can't hear you, Mr. Rummel.

Mr. Lodish: "It was on Thursday."

Q. (By Mr. Lodish) March 18th?

A. Yes.

Q. Were you there March 19th?

A. Friday, I was there Friday morning, and they were on a sit-down.

Q. What was your job at the Electric Vacuum Cleaner Company?

A. Punch press operator.

Q. How much were you making an hour?

A. Fifty-four cents.

Q. Forty hours a week?

654 A. Forty hours a week.

Q. Did you earn any money between March 19th and May 24th?

A. No, sir.

Q. You got no relief?

A. I got relief.

Q. How much did you get altogether?

A. Oh, it come to about ten dollars and fifty cents every two weeks.

Q. You got ten dollars and fifty cents every two weeks during that period?

A. Yes.

Q. Very briefly, I want to ask you a few questions: did you belong to the MESA at one time?

A. No, sir.

Q. Did you belong to the American Federation of Labor and for how long?

A. Yes, sir.

Q. When did you first join the American Federation of Labor?

A. I had to sign up the American Federation of Labor to get my job back.

Q. You mean just lately?

A. Just now.

Q. Until May—when did you join the American Federation of Labor—what date?

A. I think it was around April 10th, I believe.

655 Q. A few days after the plant opened?

A. Yes.

Q. It opened April 5th?

A. Yes.

Q. And that is the first time you joined the American Federation of Labor?

A. First time.

Q. Had you joined any other Union?

A. Why, I signed the C. I. O. before the American Federation of Labor.

Q. When did you sign up the C. I. O.?

A. The time they had the meeting there during the strike.

Q. At Arnold's Hall?

A. Arnold's Hall.

Q. How long had you worked at the Electric Vacuum Cleaner Company before March 19th, altogether?

A. You mean before the strike?

Q. Yes; before March 19th?

A. I believe about three weeks.

Q. You were a new man then?

A. A new man. A new man then.

Q. About a little over three weeks?

A. About a little over three weeks.

Q. Were you asked to join the American Federation

of Labor during that time?

656 A. Some of them approached me, but I didn't pay no attention to them. I didn't say yes or no.

Q. You were approached and you didn't join?

A. Didn't join.

Q. Then you joined the C. I. O., then you joined the American Federation of Labor?

A. To get my job back, yes, I had to sign with the American Federation of Labor in order to get my job back.

Q. Did you try to get to work April 5th, the Monday the plant opened?

A. I didn't want to go near there. Didn't want to get in a fight.

Mr. Orgill: I ask that that answer be stricken out.

Trial Examiner Ringer: Overruled.

Q. (By Mr. Lodish) Did you go to the plant?

A. I was over once, but I was not inside.

Q. Were you near the plant—did you go through the plant, April 5th?

A. I was across the street.

Q. You were across the street?

A. Yes.

Q. You could see the plant?

A. Yes.

Q. But you were afraid to go near it?

A. Yes.

657 Mr. Lodish: That is all.

Trial Examiner Ringer: Any questions?

Cross-examination

Q. (By Mr. Spieth) You started to work for the Electric Vacuum Cleaner Company about the first of March, 1937; is that right?

A. Yes.

Q. Were you advised at the time you went to work that you would be requested to join the American Federation of Labor Union by your foreman?

A. Well, it was to one of the C. I. O. leaders that I went first, and he said: "In order to get your job back—"

Q. I am not talking about that time. I am talking

about when you first went to the company, March 1st?

A. Well, a couple fellows asked me then and I didn't pay no attention.

Q. When you were hired, you were informed—

A. No, sir.

Q. —that it was the practice of the company to take new men, but new men must join the Federation within three weeks?

Mr. Carey: I object to the form of the question.

A. There was nothing said to me about that; no, at that time.

Q. Isn't it a fact that you went back to work for the company on May 10th instead of May 24th?

A. No, I didn't go back May 10th.

658 Q. You didn't. You are sure it was the 24th?

A. Yes.

Q. And part of the time that you were out of work, you were in the hospital; weren't you?

A. Yes, sir.

Q. How much time?

A. Oh, two weeks or so.

Q. When was that?

A. That was last month, some time.

Q. What was that?

A. Last month.

Q. During May?

A. Yes.

Q. When did you first go back to the plant to see about geting back to work?

A. That was about a week before I went—before I got in to work—the week before that.

Q. That would be some time between the 10th and 24th of May?

A. Yes.

Mr. Carey: That is all.

Redirect Examination

Q. (By Mr. Lodish) Did you ever hear anything about a closed shop?

A. No, sir.

Q. At the plant?

659 A. No, sir.

Mr. Lodish: That is all.

Cross-examination

Q. (By Mr. Orgill) You say it was the C. I. O. that told you you would have to sign up with the American Federation of Labor before you could go back to work?

A. It was, I forget that fellow's name, he has got that office up on Five Points there. I went down and wanted to know when we were going back to work, and he said in order to go back to work, we would have to go down to the American Federation of Labor Hall to sign one of them yellow cards to go back to work.

Mr. Orgill: That is all.

Mr. Lodish: That is all. Thanks very much.

Mr. Orgill: One more question, your Honor, before he leaves.

Trial Examiner Ringer: Will you step back into the witness stand?

Mr. Orgill: I don't think that is necessary.

(Witness resumes the stand.)

Q. (By Mr. Orgill) How much are you getting a day?

A. It is four dollars and seventy-two cents a day. Average of fifty-nine cents an hour.

Mr. Orgill: That is all.

Mr. Lodish: Mr. Examiner, while the next man is

660 being called, I have in my possession a dues book issued to William Behres, the production of which was requested by counsel. William Behres testified that the book would show that his dues were paid up solidly beginning somewhere in 1934 until December, 1936. The book so shows. He further testified that although he paid two months dues at the time of the dispute, that the book would not so show, and that is also true. I objected to the production of the book for that reason, because it proved nothing in addition to what he said. I am now turning this book over for inspection to the various counsel and will return it to Mr. Behres, as merely being produced in response to a request. It adds nothing to the testimony thus far.

Testimony of James Mitchell

(James Mitchell took the stand.)

Trial Examiner Ringer: Were you sworn?

The Witness: No.

JAMES MITCHELL, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Lodish) Your name is James Mitchell?

A. Yes.

Q. M-i-t-c-h-e-l-l?

A. Yes.

661 Q. And your address is 1778 Alcoy Road?

A. Yes.

Q. Are you working now, Mr. Mitchell?

A. Yes.

Trial Examiner Ringer: Speak up louder than that.

Mr. Lodish: A little louder so we can all hear you.

A. Yes, I am working.

Q. When did you start working?

A. May 19th.

Q. Do you know whether your present job is permanent or temporary?

A. They said it was permanent; I don't know.

Q. Is it as good a job as you had at the Electric Vacuum Cleaner Company?

A. It is the same thing, same work.

Q. Same work?

A. Yes.

Q. Same pay?

A. Yes.

Q. Same hours?

A. Yes.

Q. So that you don't care whether you get your old job back or not; is that true?

A. Well, I have got the old job back.

(Discussion had off the record.)

662 Q. When did you say you went back to work?

A. May 19th.

Q. When was the last day that you worked there before then?

A. (No answer.)

Q. Was it March 19th, Friday?

A. No; Wednesday was the last day I worked.

Q. March 17th?

A. Yes.

Q. The day before the sit-down strike?

A. Yes.

Q. Is there any reason why you didn't work the last two days there?

A. Because they were on strike. They started on Thursday.

Q. Did you go to the plant?

A. Oh, yes.

Q. By not working, you meant that you were in the plant but you didn't work because there was nothing to do?

A. Yes.

Q. But you were present Thursday and Friday?

A. Just Thursday.

Q. Just Thursday?

A. Yes.

Q. Were you on a night shift?

A. Yes, sir.

Q. How much were you getting an hour?

663 A. Fifty-seven cents.

Q. Have you earned any money between March 19th and May 19th?

A. No, sir.

Q. Have you gotten any by way of relief?

A. No.

Q. Did you originally belong to the MESA?

A. No.

Q. How long had you worked at the Electric Vacuum Cleaner Company?

A. A year.

Q. You worked there a year altogether?

A. Yes.

Q. Did you ever join the American Federation of Labor?

A. No.

Q. You are now a member of the American Federation of Labor?

A. Yes.

Q. But until March 19th you never joined the American Federation of Labor?

A. No.

Q. You were never asked to?

A. Never asked to.

Q. Never asked to, and you never joined it; is that right?

A. Yes.

Q. Did you join the C. I. O.?

A. Yes.

664 Q. When and where was that?

A. I joined it outside. Some fellows brought cards up there.

Q. Was there a meeting?

A. No; I signed a card outside of the shop. It was the same day the strike started, must have been March 19th.

Q. Thursday or Friday?

A. Thursday.

Q. Thursday, March 18th?

A. Yes.

Q. Did you try to get into the plant April 5th, the Monday it opened?

A. Tried to, but you couldn't.

Q. Now, after that how many times did you try to get back to work?

A. Well, I went over there every day to the plant for two weeks. First, I had to go down to the American Federation of Labor and I got a card.

Q. You did get a card?

A. Yes.

Q. When did you get that card?

A. It was on May 5th, I think it was.

Q. The Monday that it opened?

A. Yes.

Q. You got a card that day?

A. I got on Thursday a card.

Q. That is the Thursday after April 5th?

A. Yes.

Q. You got the card then April 8th?

A. That is right.

Q. Was that a clearance card?

A. Yes.

Q. Then what did you do?

A. I got down to the gate and the man took the card and said I could go in, so I went in the plant and they told me to come to work Monday night. That was the 12th.

Q. Yes?

A. To come to work. When I come back I asked the man for my card and he wouldn't give it back to me, so I went over Monday and they wouldn't let me in. Then I kept going over trying to get in until the 22nd. I went down to the American Federation of Labor twice between that time and they didn't give me no card so on the 22nd they give me another card.

Q. At the American Federation of Labor Headquarters?

A. Yes; and I got in the plant then. I didn't get my job until May 19th.

Mr. Lodish: That is all.

Trial Examiner Ringer: Proceed.

Cross-examination

Q. (By Mr. Spieth) How much an hour are you making now?

A. Seventy cents.

Q. Prior to March 19th you were earning fifty-seven cents an hour?

A. That is right.

Mr. Spieth: That is all.

Examination by Trial Examiner Ringer

Q. (By Trial Eaminer Ringer) Did you get a raise when you went back?

A. Yes; when I went back.

Q. How much of a raise did you get when you went back?

A. Five cents. Made sixty-two.

Q. Then you got one or two raises since then?

A. Two. One was for one cent and the other one was for seven.

Q. Were those general raises throughout the factory?

A. No; they weren't general raises.

Q. You got that on account of your progress and so forth in the work?

A. I imagine. They just come and told me that is what I was making.

Trial Examiner Ringer: That is all.

Mr. Orgill: Just a moment.

Cross-examination

Q. (By Mr. Orgill) You didn't attend any C. I. O. meetings?

A. Oh, yes.

Q. Where?

A. Down to the Postoffice.

667 Q. When was that?

A. I can't tell you the dates.

Mr. Orgill: That is all.

The Witness: Just about every time there was one, I guess.

Direct Examination

Q. (By Mr. Carey) Did you attend any American Federation of Labor meetings?

A. No; I haven't.

Mr. Carey: That is all.

Mr. Lodish: Mr. Examiner, as you noticed, I was rather surprised to find a couple men testifying who are already working at the Electric Vacuum Cleaner Company. I didn't intend to put anybody on the stand who had gotten their job back, but that goes to prove what I said before, that it is hard from day to day in this particular proceeding to know where we stand with our pleadings, but it leads me naturally into the stipulation that we discussed.

ow, we believe that we are all agreed now and prepared
make that stipulation. I would like to attempt it for the
cord and if satisfactory, that will close our "C" case.
Mr. Spieth: May I ma a suggestion off the record?
(Discussion had off the record.)
Trial Examiner Ringer: I am very much pleased that
n worked that out apparently last night.
Mr. Lodish: Mr. Examiner, the amended com-
8 plaint alleges that several hundred men were refused
reinstatement when the plant opened. The company
tegorically denies that several hundred men were refused
instatement in the plant the day the plant opened. There
s therefore become at least an issue of fact even if it be
t an issue of law, as to whether any at all of these men
re refused employment on April 5th or various dates
ereafter. A large group of these men, running into may-
one hundred or one hundred fifty, therefore, are en-
led to an opportunity to present their cases to the Board
d claim if they wish that they are entitled to back pay
ause of a refusal to reinstate. The company's attitude
parently is that nobody was refused admission, and that
h case stands on its own, that any man who would tes-
would have to show of his own accord that he made
proper effort and show that he was actually refused
nstatement. In view of that fact, it becomes a rather
plicated matter of evidence and absolutely necessary
t each man who desires to be given consideration take
stand, and that the Respondent and other parties be
en a full and complete opportunity to cross-examine
se witnesses. The Respondent claims, and with some
ification, that they didn't quite understand that the
e would be that broad, and they ask that they have a
of names of the possible parties, just as they asked for
st of names of those whom we claimed were definitely
and permanently discharged. Now, such a list was in
existence. I saw it. It apparently has gone out of
town with Mr. Pascoe. That list was taken from a
and is being reconstructed. A new list is being made.
derstand I will have it this afternoon. Now, it is there-
, I believe, stipulated between all parties that that list

will be handed over to the Respondent so that he may prepare his defense if and when it should ever become necessary. It is further stipulated, then, that at some future time if and when it should become necessary, an ancillary proceeding will be conducted for the purposes of determining who is entitled to back pay, if any, and how much. It is stipulated that all the evidence taken in this proceeding will be considered part of that proceeding, and that no further pleadings of any kind will be necessary except that the Respondent may, if it wishes, file any type of answer in connection with the list of names adviisng of their stand in the matter, even as they did woth regard to the twenty-six or twenty-eight alleged to have been discharged. With that understanding, it is satisfactory with us that the matter be held in abeyance until this matter be finally decided to determine first whether there be any necessity for an ancillary proceeding, and second, to give all parties an opportunity to handle that property if and when the time arises.

Mr. Spieth: Is this list that you are speaking of one that has been filed with the Board and that has been filed prior to the filing of this complaint?

670 Mr. Lodish: I don't know whether or not the term "filed" is proper. It is a list that has been presented to us as potential complaints. That is, we have been given a list—that is, at one time it was larger than twenty-eight—of so many men who were definitely discharged and so many men who claim back pay of a week or two or three. Now, that is your answer.

Mr. Spieth: Is it the practice of the Board to have names that are submitted that way supported by an affidavit?

Mr. Lodish: Well, it is all part of the large affidavit. You see, in one case we have two thousand men—the Remington Rand now, as a matter of fact, there is one affidavit saying that one thousand men were discharged or refused reinstatement.

Mr. Spieth: Then, do I understand that you had a general affidavit along the lines of the petition that there were five hundred fifty men?

Mr. Lodish: I have an affidavit here. Of course, this submitted confidentially to the Board. There are a lot affidavits submitted. But I will just read: "Wherefore, mplainant prays that the Electric Vacuum Cleaner Comny be compelled to pay to said employees whom they did t re-hire when the plant reopened, their just wages from arch 19th, 1937."

Mr. Spieth: What is the date of that?

Mr. Lodish: That was April 21st.

Mr. Spieth: Now, you say that this list of names is supported by a poll; do I understand you correctly?

Mr. Lodish: Mr. Examiner, I have no objections to swering any questions, but I would rather not go into e mechanics of what was done. I will just state, and fuse to elaborate further, that there was a poll. In ner words, some Union organizers in some way asked ese men whether they wanted to be involved in it. Now, don't want to get into a position of embarrassing people. ese one hundred and fifty men are working there. I n't want anybody to know what they did privately or at me, or anything of that kind. I mean, I think it is unecessary in this colloquy. I am just stating officially and ofessionally that we had a list and that that list was ken from a poll, and I think that is enough. And furtherore we are going to present that list to counsel for Reondent. I don't know what he is driving at. I imagine is quite possible that some of these men who at one time ought they would like back pay maybe don't want it any re, maybe don't want to go through with the hearing. the one hundred and fifty maybe half will decide they nt to take a crack at it, and half won't.

Mr. Spieth: I have no means of knowing that, of course. ave not the names.

Mr. Lodish: You will get the names. I don't see the purpose of questioning along that line.

Mr. Spieth: The only purpose of questioning along that line was to find out if that was a list of mes that was on file with the Board prior to the Board's stituting this complaint.

Mr. Lodish: The answer is "yes," definitely.

Mr. Spieth: And you say that the list is with Mr. Pascoe?

Mr. Lodish: I don't know. I am told Mr. Pascoe has it. I don't have it.

Trial Examiner Ringer: Of course, the whole thing is just to save that.

Mr. Lodish: That is all.

Trial Examiner Ringer: For later determination, if, as, and when it would become appropriate and satisfactory.

Mr. Spieth: And to put some limit on the list so that we will not have it added to and name after name dragged along. There should be some limit on it.

Mr. Lodish: If Mr. Spieth is interested in the limit, I don't think the list will be more than one hundred and fifty.

Mr. Spieth: That is fifty bigger than it was yesterday!

Mr. Lodish: No; it was always one hundred and fifty.

Mr. Spieth: I thought you said one hundred.

Mr. Lodish: That list may include some of the twenty-eight; I am not sure. Maybe early in the proceeding, it might have been—they hardly knew how many, and when the attempt was made to take a poll, they found out
673 that thirty or forty men or some more went back to work, so the next day the list changed, you see.

Trial Examiner Ringer: If any of the twenty-eight are included in that list, they ought to be removed from that list.

Mr. Lodish: There is no harm in having them there. They have already testified. There will be no question about that.

Mr. Orgill: As I understand it, you are trying to save time until either certain principles are established or held to be fallacious.

Mr. Lodish: That is right. In other words, the essence of this whole thing, Mr. Examiner, is this: why should we put on even fifty men when there is a possibility that eventually there may be a decision that they are not entitled to anything. It is nothing more than a complete waste of time.

Mr. Orgill: Now, I am coming to my proposition: why

wouldn't it be effective for all purposes if with the consent of the Respondent, you should dismiss as to this particular group without prejudice?

Mr. Lodish: Yes. I don't want to file new pleadings. I will absolutely refuse to do that. I had already prepared to go ahead. I have got fifteen people coming by request, and if that satisfies you personally, I don't want to draw any more pleadings. I have got too much business. There is no point in dismissing and refiling when we can do it this way. And in addition to that, Mr. Examiner,
674 this is concerned only with the "C" case and the only real parties in interest in this "C" case is the Board and the Respondent. Any agreement reached between the Respondent and the Board will be binding.

Trial Examiner Ringer: There is no question about that.

Mr. Orgill: I assure you I was not trying to butt into your proposition. I was merely making the suggestion to be helpful.

Mr. Lodish: I appreciate that.

Mr. Orgill: I do not want to be chastised by you or anybody else.

Mr. Lodish: No; I want to state very definitely that I don't want to do any more work than I have to do.

Mr. Spieth: That list will be available this afternoon?

Mr. Lodish: It will be. I am sorry it is not here. It was in existence, and Mr. Pascoe went on another case.

Mr. Spieth: How will that list be handled? Will it just be approved and filed with you?

Mr. Lodish: I think that the proper way to handle that is to give Respondent one copy and put one copy in the record. That is all I am interested in, and if the Respondent wishes to answer in detail or take any type of action they desire, it is perfectly all right. The chief part of the stipulation is this: first, that all of this evidence will be considered part of the other case because it is certainly a hopeless proposition to expect to do this all
675 over again, and certainly, that no further pleadings be required because we are all ready to go ahead. It is just a postponement of something that could start

in five minutes; that is all it amounts to, and give an opportunity to study the thing and go ahead later.

Mr. Spieth: For the Respondent, I will say that this stipulation is without any prejudice to its making any exceptions that it may see fit to make.

Mr. Lodish: Oh, absolutely.

Mr. Spieth: And with the right to inquire into and introduce in evidence as to how this list was made up and how it was polled and reserve all defenses that it might have.

Mr. Lodish: Absolutely.

Mr. Spieth: Then, I think that we are willing to stipulate on that basis.

Mr. Lodish: Absolutely. You are waiving no objections, no defenses; waiving nothing of any kind, shape, or manner, except waiving the physical going-ahead at the present time; waiving any further pleadings on our part, and waiving the necessity of repeating the process of getting all the evidence that we have so far gotten. I will state further that they will have the privilege to reopen—that is, put any further evidence they would like, any further evidence that they have had no opportunity to put in now, and they waive absolutely no objections of any kind.

Mr. Spieth: And by entering into this stipulation
676 we are not making any admissions.

Mr. Lodish: That is definitely so.

Mr. Spieth: Then, I think that this record can show this colloquy, and that will take care of the whole thing.

Mr. Lodish: It is not very long. It can go in, and that is satisfactory.

Trial Examiner Ringer: The stipulations as above set out are approved by the Trial Examiner.

Mr. Lodish: I think that, Mr. Examiner, we rest our "C" case, and without further ado we step into the "R" case and make this comment—.

Mr. Spieth: May I inquire whether the Respondent has any opportunity—you say you step from the "C" case into the "R" case?

Mr. Lodish: I do that for the sake of convenience. I think if you will hear my statement, you will realize why.

Trial Examiner Ringer: We will permit you to make your statement, at least.

Mr. Lodish: We have no further evidence of any kind in the "R" case, with this exception: that those exhibits which were refused admission in the "C" case—and I think there were three of them: the Exhibit 25, which is the list of cards, and Exhibits 17 and 18, I believe, which was the list of names taken from the original list that is marked up; that I offer in addition to all the rest of the evi-
677 dence and testimony and exhibits in the "C" case, I offer those in addition to the "R" case, and with that I rest.

Mr. Orgill: If I may be permitted to talk without Defendant complaining, may I inquire if we are not going to have any right to comment on the first case before going into the second case? Are they separate and distinct cases or not? I want to be informed.

Trial Examiner Ringer: Of course, the two are being tried together. I want to assure you that you may speak whenever you are moved by the spirit.

Mr. Orgill: We were informed that we would try the cases separately.

Trial Examiner Ringer: Of course, we have up to this moment been trying the "C" case separately.

Mr. Orgill: All right, if we are through with the "C" case, it seems to me that we ought to pause long enough to see whether there are any motions to be made, or anything of that kind, so they will be separate and distinct.

Trial Examiner Ringer: I don't think we have gone beyond the "C" case.

Mr. Orgill: Except that he is now going to the "R" case.

Mr. Lodish: I am stating that there is nothing further in the "R" case except that we are offering the exhibits which have been refused admission.

Trial Examiner Ringer: For the rest of the "C"
678 case they will be refused admission. Are you re-offering them in the "C" case?

Mr. Lodish: No; in the "R" case, because that is all I have.

Trial Examiner Ringer: I would rather not get into the "R" case until we find out if there are any motions in respect to the "C" case.

Mr. Lodish: All right then. That is all. We rest.

Trial Examiner Ringer: Why not take a five or ten minute recess now?

(Recess.)

Mr. Spieth: If your Honor please, at this time on behalf of the Respondent, I make a motion that the complaint be dismissed. Briefly, our grounds are that the facts do not support the allegations set forth in the complaint. The company had a contract of which there is no dispute as to the terms. The company, the evidence shows, lived up to that contract, and that being true there can be no discrimination. Furthermore, on the question of a bargaining agent, in this Local No. 720, the evidence fails to show there ever was such a group in existence, and if there was such a group in existence, the employer is not required where he has a contract that is in full force and effect to deal with any group that purports to represent the majority.

679 Trial Examiner Ringer: Since your grounds involve legal questions that will have to be determined, I will overrule the motion.

Mr. Spieth: Then we proceed without prejudice. I call Mr. Wilson.

(Mr. R. B. Wilson takes the stand.)

R. B. WILSON, called as a witness for the Respondent, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Spieth) You are the same Mr. Wilson that testified on the Board's case at the time this hearing was started?

A. I am.

Mr. Spieth: I take it, Mr. Examiner, there is no further need to identify him, having been on about eleven times.

Trial Examiner Ringer: That is R. B. Wilson, isn't it?

The Witness: Yes.

Q. (By Mr. Spieth) You were present when Clyde Boyes testified?

A. Yes.

Q. Do you recall his testimony to the effect that on a Wednesday or Thursday a group of men of which he was a member were in the company offices and at that time, he claims you made a statement that these men would be silly not to join the Federation?

A. I do.

680 Q. Did you make such a statement?

A. I did not.

Q. Did you at any time tell Boyes or any other employees that the company had, that they had to join the American Federation of Labor Union or that they would be silly if they did not join?

A. I never have.

Q. Now, do you recall the testimony of a Mr. Behrse in regard to what a man by the name of Newman told him occurred in your office?

A. I do.

Q. What is it you recall he said about that meeting?

A. As I recall his testimony, he said that when Mr. Newman returned from a conference in my office, Mr. Newman told him that I had said that I would take care of the situation by calling in the members of the Machine Shop and talking to them, and if necessary, fire them. I think he said one or two. I think he qualified his remarks by saying one or two.

Q. Did you ever make that statement?

A. I did not.

Q. Do you recall a meeting in your office at which Newman was present?

A. I do.

Q. What were the facts as you remember them, and what occurred at that meeting?

681 A. That meeting on the morning of Thursday, March 18th, I believe, was the date Mr. Muehlhoffer, Mr. Rinehart, and Mr. Newman came to my office as repre-

senting the Polishers' Group and advised me that there was some agitation in the Machine Shop, which was the first knowledge of any sort that I had had of any such agitation or disturbance. I was caught entirely flat-footed. I told them in effect that I considered them to be unduly alarmed and everything that was said at that meeting had to do with allaying their alarm, sending them back to work, and I told them that we would proceed to investigate the matter and that was all that took place at that meeting.

Q. As a result of that investigation, did you inform any of your employees that they would have to join a union in order to keep their places?

A. I did not.

Q. Now, on the morning of April 5th, 1937, there was some picketing and disturbance outside of the plant during that morning; wasn't there?

A. Yes, sir.

Q. And there was quite a crowd of people around?

A. Yes, sir.

Q. You didn't go out to make any investigation or do anything in connection with that?

A. No.

Q. On Tuesday, April 6, what was the condition
682 outside of the plant?

A. Very similar to that of Monday.

Q. And on Wednesday, the 7th?

A. Apparently the trouble had all died down.

Q. And following April 7th, was there any picketing or any crowds congregating?

A. No; there were a few representatives of the American Federation of Labor at the gates. Beyond that there was no disturbance of any sort.

Q. Now, in December of 1936, was there a wage increase negotiated by the Unions who were a party to your contract, your employees?

A. There was.

Q. What was that increase?

A. That consisted, outside of a few individual adjustments, of a horizontal five per cent increase throughout the plant.

Q. Now, calling your attention again to the meeting in my office on March 20th, 1937, at which you have testified various representatives of the American Federation of Labor were present, and the business agents representing the unions with whom you have contact, was there some discussion at that meeting regarding a further increase or adjustment of wages?

A. There was.

Q. And what was that conversation, if you recall?

A. Mention was made by one or more members of
683 the American Federation of Labor that there should be some adjustment made in wages. In the first place, they called our attention to the fact that at several points in our plant, we were out of line with prevailing wages for comparable work, and that in addition to that there should be another horizontal increase to keep in line with what was taking place in our industrial districts.

Q. But no agreement was come to in regard to those matters?

A. That was deferred to another time. They said that —we agreed in general to what was said regarding this in a general way, and it was agreed to be taken up specifically at a more opportune and a later time.

Q. Those matters were taken up at a later time, were they not?

A. They were.

Q. And they were taken up subsequently to April 5th?

A. That is right.

Q. And those negotiations resulted in raises and adjustments for your employees?

A. Both.

Q. When you say "both," what do you mean?

A. I mean that there was some very definite adjustments of wages in certain departments where it was called to our attention that the relative rates in those departments were incorrect. Those adjustments having first been
684 made, then another horizontal increase was given.

Q. Now, those inter-departmental adjustments, if you call them that, are such as James Mitchell testified to here this morning. He said he was getting fifty-seven cents

an hour and recently he had two increases and is now getting sixty-seven cents?

A. Without knowing specifically Mitchell's case, I would say that that is typical.

Q. What horizontal increase was given throughout the plant as a result of negotiations?

A. An increase of five cents an hour to all employees.

Q. And in addition to that, some other employees were given particular raises to bring them into line?

A. Exactly.

Q. With either their particular industry or their co-workers in the same department?

A. Yes, sir.

Q. The company throughout its negotiations with the American Federation of Labor and with regard to its policy during the period covered from March 19th on has been acting under advice of counsel?

A. Invariably.

Q. And all steps that the company took, and the policy that it followed, was on the recommendation of its counsel?

A. Yes, sir.

Q. And during that time I acted as such counsel?

685 A. Yes, sir.

Q. In fact, I was a representative of the company as counsel for a number of years?

A. Yes, sir.

Mr. Spieth: I think that is all.

Trial Examiner Ringer: Any questions, Mr. Lodish?

Mr. Lodish: Yes. Just one question.

Cross-examination

Q. (By Mr. Lodish) You said, Mr. Wilson, you did not tell these people that they were silly as they left that conference?

A. I didn't.

Q. And that is what Mr. Boyes said was the last thing that happened. He said the last thing you said as he was leaving was, you said: "You are silly if you don't join the Union," and you deny that?

A. Yes.

Q. And the second last thing, Mr. Lenahan said that they were fired, and then they walked out?

A. I recall one such statement on the part of Mr. Lenahan; he made it specifically regarding Mr. Ramsey, which has previously come out in the testimony, I believe.

Q. That is, that Ramsey was fired?

A. Yes.

Q. Is that what Mr. Lenahan said at that time?

A. Yes.

686 Q. That Ramsey was fired?

A. Yes.

Q. And you didn't say they were silly?

A. I did not.

Q. Did you say anything at all?

A. I did.

Q. What did you say?

A. I addressed the group as a whole and reiterated the policy of the company with regard to its contract with the American Federation of Labor, and that any employee of ours who within our plant did anything to disturb the friendly relationship existing between the company and the American Federation of Labor would be considered as operating against the best interests and subject to dismissal.

Q. That is what you said?

A. I limited my remarks very specifically to that statement, which is substantially as given to you just now.

Mr. Lodish: That is all.

Cross-examination

Q. (By Mr. Carey) Mr. Wilson, in your capacity as Vice-President of the Electric Vacuum Cleaner Company, would you be familiar with any agreement between your company and any union?

A. Yes.

687 Q. Did the Electric Vacuum Cleaner Company ever sign an agreement with a labor organization in the past previous to 1935?

A. Not to my knowledge.

Q. Were there any American Federation of Labor cards signed in your presence?

A. No, sir.

Q. Were you aware that the offices of the company were used for the purpose of signing American Federation of Labor cards?

A. I was not.

Q. Was the same opportunity given to the Mechanics Educational Society of America that was given to the American Federation of Labor?

Mr. Spieth: I object. I can't see that that has any bearing. We don't go back of the contract we had in 1925. There is no question here regarding the Mechanics Educational Society.

Trial Examiner Ringer: Of course, it is outside the scope of the direct examination anyway, I think.

Mr. Spieth: Yes.

Trial Examiner Ringer: I believe I will sustain that.

Q. (By Mr. Carey) Is it a condition of employment in the Electric Vacuum Cleaner Company to be member of the American Federation of Labor?

A. Not of employment. It is now, yes. But prior to the time of this case, it was not.

688 Mr. Spieth: Prior to the time of the last contract?

The Witness: Yes.

Q. (By Mr. Carey) Who determines what union the employees must be a member of?

Mr. Spieth: I object, your Honor.

Trial Examiner Ringer: Overruled.

A. Who determines what union? I don't think I quite understand.

Q. (By Mr. Carey) If an employee attempts to secure work in the Electric Vacuum Cleaner Company, and he approached the management, what takes place?

A. Now, or prior to March 19th?

Q. Now.

A. Now, he is referred to the American Federation of Labor.

Q. Does the management in any way participate in a discussion as to what unit of the American Federation of Labor that employee should belong to?

A. No.

Q. Is there any discussion as to appropriate bargaining agencies, that is, appropriate bargaining units, in your plant?

Mr. Spieth: I object, your Honor. I don't think there is any question of that kind in this case. There may be in the "R" case, but there is no question here.

Trial Examiner Ringer: Sustain the objection. I
689 am inclined to agree with that.

Q. (By Mr. Carey) When did you become aware that the C. I. O. was active in securing members in your plant?

Mr. Spieth: I object. That has been gone into already on the Government case, and with this witness.

Trial Examiner Ringer: Of course, you didn't hear this witness testify before, did you?

Mr. Carey: No.

Trial Examiner Ringer: That was gone into quite thoroughly, and I don't believe we need to repeat it.

Mr. Carey: That is all.

Trial Examiner Ringer: Anything further?

(No response.)

Trial Examiner Ringer: Next witness.

(George R. Paulus takes the stand.)

Trial Examiner Ringer: Have you been sworn?

The Witness: No.

GEORGE R. PAULUS, called as a witness for the Respondent, being first duly sworn, testified as follows:

Direct Examination

Mr. Spieth: Is it all right if I sit?

Trial Examiner Ringer: Yes.

Q. (By Mr. Spieth) What is your name, and where do you live?

A. George R. Paulus, 1551 Belmar Road, Cleveland Heights.

690 Q. Keep your voice up as much as you can.

A. Yes.

Q. What is your position with the Respondent, the Electric Vacuum Cleaner Company?

A. Plant Superintendent.

Q. How long have you held that position?

A. Fourteen years.

Q. Tell us something about what your duties are as Plant Superintendent?

A. My duties are to see that they get production through, see that production goes through the factory and we meet a schedule that is gotten out by the Sales Department.

Q. In that connection, are the foremen of the various departments and the employing of help directly under your supervision?

A. Yes, sir.

Q. In 1935, June, are you familiar with the contract that was made by the company with various American Federation of Labor Unions?

A. Yes, sir.

Q. Will you tell us what that contract or agreement provided with reference to employees belonging to a union, if any?

A. It was a closed shop at that time.

Q. What do you mean by a closed shop?

A. A closed shop means that people that are
691 working there— the new people coming in were to join the union within three weeks of the time they came there.

Q. How about employees that were with the company at the time this contract was made in June of 1935?

A. Those employees, the Union, as I understand it, tried to get those people to join the Union.

Q. There was no requirement that they join any union?

A. No, sir.

Q. Now, did you give your foreman any instructions with reference to the employment of new men, and as to their obligation to join the Union?

A. After—in 1935 the foremen, each foreman, I instructed them myself to tell every man when he employed him, that he was required to join the Union within three

weeks from the time he started.

Q. That did not require any particular Union, but it was one of the American Federation of Labor Unions?

A. Yes, sir.

Q. Did you follow up your foremen to see that those instructions were obeyed?

A. I spoke to the foremen at almost regular intervals, asking if they were following through those instructions.

Q. So far as you know, they did?

A. Yes, sir.

Q. Now, you didn't follow up, however, to see whether new employees joined the Union; did you?

A. No, sir.

Q. When, if at any time, did you first learn that some of the new employees were not joining the American Federation of Labor?

A. I would say in the forepart of March.

Q. Of what year?

A. Of 1937.

Q. How did that information come to you?

A. The business agents from the Machinists' Union told me that they were trying to get the members to join, and they said they didn't seem to be making much headway.

Q. You say getting members to join. Does that mean old members or old employees or new members?

A. At that time, they were working on the new members, the people since 1935.

Q. What if anything further did they say to you about new members not joining?

A. They told me that they weren't getting them to join and that is about all they said to me.

Q. What if anything did you do after that?

A. They asked me at that time if I would help them out, if I would lend my assistance.

Q. Then as a result of that request, what did you do?

A. I called in several groups of men from the Machine Shop, that seemed to be where most of them were. They asked me to see what I could do about it, and we talked to those men and asked them if they would

use their influence to get these new men to join.

Q. Those were older employees?

A. Those were old men who had been there a long time, men that I felt I knew very well.

Q. Did you discuss with them the company's contact with the Union?

A. We told them that we had a contract with the Union, and explained to them the contract and asked their assistance.

Q. Now, in connection with asking their assistance, you didn't require them to join or insist that they join?

A. No; I asked them to help us on the men that had come in since 1935.

Q. Now, on several occasions you have had some of your employees in at your office and talked this matter over with them, as you have testified?

A. Yes, sir.

Q. At the first meeting, or two, of that type, were any of the representatives of the American Federation of Labor present?

A. No, sir.

Q. Who was present?

A. Mr. Waterbury was present when we called the men in, the different men.

694 Q. Then later on, did you have some meetings with the men at which various representatives of the Union were present?

A. At one time there was a meeting where Mr. Gordon and Mr. Toth were present, where we called in some of the men and they spoke to them at that time.

Q. Do you remember about when that meeting was?

A. I would say that was probably two weeks—I would say probably the second week in March—maybe probably the first week in March.

Q. What was said at that meeting?

A. At that meeting—Mr. Toth did most of the talking at that meeting, and he explained to these men our contract and asked them if they wouldn't help them along.

Q. Did you, at any of those meetings, at which the American Federation of Labor representatives were pres-

ent, tell any of the men that they would be discharged if they didn't join the Union?

A. No, sir.

Q. Do you remember a meeting at which Mr. Ramsey was present?

A. Yes, sir.

Q. Do you recall about when that was?

A. I would say about the 15th or 16th of March.

Q. Do you remember what happened at that meeting?

A. I was called into that meeting. That was an assembly at the meeting, and I was called there after the
695 men were assembled there.

Q. Who was there when you came?

A. I may not be able to mention all the names, but Mr. Lenahan, Mr. Troth, Mr. Gordon, Mr. Muehlhoffer, and one or two other men there that I don't remember their names.

Q. Was that anything said at that meeting about Ramsey being discharged?

A. Yes, sir.

Q. Who said that and what happened?

A. Mr. Lenahan requested that we discharged that man.

Q. What was done about Lenahan's request?

A. I sent for the foreman of the Tool Room or the foreman of the Machine Shop and told him that he should discharge that man.

Q. Now, about what time was that?

A. I would say two o'clock in the afternoon.

Q. Now, after, as you say, Ramsey had been notified of his discharge, what if anything did you do?

A. I notified the foreman of the Machine Shop, and that is all I did do at the time.

Q. After that, what was done?

A. After that, the foreman of the Machine Shop came in and told me that the men were sitting down in the Machine Shop.

Q. Did you send for Ramsey at that time?

A. We went for Ramsey then and called him back again and he refused to come in.

696 Q. What was the purpose in calling Ramsey

back?

A. We wanted to tell Mr. Ramsey that we did not want to discharge him, we reconsidered it.

Q. And he refused to return?

A. Sir?

Q. He refused to return?

A. Yes, sir.

Q. Did you go down to the shop after you learned of the sit-down?

A. Yes; I went into the factory. It was about three o'clock or three-thirty that I went into the factory.

Q. Did you say anything to the men at that time?

A. They were standing around in different groups, and I patted them on the back and told the men that I thought they should go home and come back to work in the morning.

Q. What did you say at that time about anybody having been discharged?

A. I didn't say anything.

Q. Did you make the statement to any of the men that Cawley* had not been discharged?

A. No; I mentioned no names about anybody being discharged. I mentioned no names.

Q. There has been some testimony here that at that time you made the statement in effect: "Forget about any discharge and go home and come back to work in the
697 morning"; do you remember making that statement?

A. I didn't make that statement. The only thing said was that they should go home and come back in the morning. I didn't say anything about any discharge.

Q. Now, at one of these meetings a Mr. Young was present; was he not?

A. Yes, sir.

Q. And when the group that Young had been with was recalled, he didn't come up with them; do you remember that?

A. I remember that now, yes.

Q. Was there any reason so far as you are concerned

*An obvious typographical error; the reference is plainly to Ramsey.

for Mr. Young not being included in the call?

A. We tried to call the same men every time. If Mr. Young was not recalled at that time, it was because we overlooked the man.

Q. Did you ever hear Mr. Wilson say at a meeting at which Boyes was present: "You men are silly if you don't join"?

A. No, sir.

Q. Or when a Mr. Newman was present at a meeting, did you hear Mr. Wilson say that—I will withdraw that. Do you recall a man by the name of Kern?

A. I recognize the name, yes, sir.

Q. Do you recall ever having told him that all the hiring at the plant was to be downtown?

A. No, sir.

698 Mr. Lodish: I object. All he said was that he recalls the name. Not that he recalls the person.

Trial Examiner Ringer: Sustain the objection.

Q. (By Mr. Spieth) What is the fact, Mr. Paulus, with respect to the men who reported to the plant for work between April 5, 1937, and April 20th, being put back to work?

A. The men that came in between—what was that last date?

Q. April 5th was the day you opened, and April 20th?

A. Any man that came in went to work right away.

Q. And did you do anything with regard to men that hadn't returned by the 20th?

A. We set a line at the 20th and we thought that everybody should be in at that time that was coming back.

Mr. Lodish: I object; it is not responsive. The question is: "what did you do?" The answer is: "We thought that it should have been—"

Mr. Spieth: He said they set a line at the 20th to take them back, and if you are going to be technical—

Mr. Lodish: It is just not responsive. Don't you want a responsive answer?

Mr. Spieth: Yes; but I think it is responsive.

Trial Examiner Ringer: Overruled.

Q. (By Mr. Spieth) Now, were the foremen instructed

to call any men that had not returned by the 20th, to come back to work?

699 A. Yes, sir.

Q. Do you know what if anything they did about that?

A. They notified quite a few of the men, and they did come in.

Q. I am going back to this meeting at which Mr. Newman was present. Do you recall Mr. Wilson having made any remark to the general effect that he would see that these men in the Machine Shop went into the Union and that if he had to fire a few of them to get them to do it, that it would be done?

A. No sir.

Q. Did he ever make any remark of that kind?

A. No, sir.

Q. Or say anything of that sort?

A. No, sir.

Mr. Spieth: That is all.

Trial Examiner Ringer: I think you would be entitled to question next, Mr. Woodle, if you wish to, since you are more interested probably in the defense.

Mr. Woodle: Most of our defense would be directed to the "R" case. I just want to ask one question.

Direct Examination

Q. (By Mr. Woodle) Do you know, Mr. Paulus, of any of your old employees who were at the plant prior to 1935 that were discharged because they refused to join the American Federation of Labor?

700 A. No, sir.

Mr. Woodle: That is all.

Cross-examination

Q. (By Mr. Lodish) Mr. Paulus, what did you mean when you said: "We set a line"?

A. We decided that the 20th of April, that up until that time, that everybody had a chance to come in that wanted to come in.

Q. Who decided?

A. I will say that I did.

Q. That is, you personally thought that by April 20th everybody who wanted to get back should be back?

A. Yes, sir.

Q. What did you do about that; did you publish that or do anything about it?

A. No, sir.

Q. That was just your own opnion of the situation?

A. Yes, sir.

Q. Do you know how long Mr. Ramsey had worked at the plant?

A. Mr. Ramsey told me at one time that he had been in our employ seven or eight years.

Q. Do you believe that is the fact, from your experience?

A. Yes, sir.

Mr. Lodish: That is all.

Direct Examination

701 Q. (By Mr. Orgill) He still is in your employ?

A. Yes, sir.

Mr. Orgill: That is all.

Trial Examiner Ringer: I would like to ask a few questions.

Examination by Trial Examiner Ringer

Q. (By Trial Examiner Ringer) You say the matter first came up to you in March of this year, that the men hadn't fully joined up with the American Federation of Labor?

A. Yes, sir.

Q. You didn't know before that but what all the new men had joined?

A. That is right.

Q. Had there been any discussions whatever between you and the American Federation of Labor representatives about how many had been joining before?

A. No, sir; not before that time.

Q. About when was that in March when that first came to you and you took up this matter?

A. It was early in March. That is about all I can say, the forepart of March.

Q. At that time, there was a discussion and you knew that the C. I. O. was organizing?

A. No; I did not know that.

Q. Not one word?

702 A. No, sir.

Q. And there was not a word mentioned by the American Federation of Labor men that there was any organization of the other sort at the plant?

A. Nothing was ever mentioned to me, and I didn't know it.

Q. Well, at that time the representatives of the American Federation of Labor told you that they were having great difficulty getting organization in your plant; didn't they?

A. In the Machine Shop, yes, sir.

Q. In the Machine Shop?

A. Yes, sir.

Q. Did they give you any figures as to how many of them would belong?

A. No, sir.

Q. No figures at all?

A. No, sir.

Q. And you talked to them at that time about whether or not the older men were required to join—men who had been with you before 1935?

A. They spoke to me?

Q. Yes; was there any discussion about that?

A. No.

Q. That was assumed, was it?

A. Yes.

Q. That they didn't have to join?

703 A. Everybody knew that.

Q. Now, had you given out the information to your employees until in March, 1937, that it was a closed shop agreement?

A. Yes, sir.

Q. When had that been given out?

A. I would say that was given out right after 1935

that it was a closed shop.

Q. It was not in your contract until 1936; was it?

Mr. Lodish: 1937.

Q. (By Trial Examiner Ringer) 1937?

A. I thought it was.

Q. You thought all the time that that was in the contract, rather than on oral agreement?

A. Yes, sir.

Q. And you think so now, then, do you?

A. Yes, sir.

Trial Examiner Ringer: That is all.

Cross-examination

Q. (By Mr. Carey) Mr. Paulus, did your agreement reached in 1935 exclude any other union but American Federation of Labor Unions from securing members in the Electric Vacuum Cleaner Company?

A. I couldn't tell you that. I don't know that.

Q. Are you familiar with the agreement?

A. Not that close.

704 Q. Was it a closed shop agreement on a verbal basis?

A. I thought it was a written agreement, but it may have been a closed agreement, but I was under the impression that it was a written agreement.

Q. Was there any other union active in securing members, other than American Federation of Labor Unions since 1935?

A. No, sir.

Q. Was there any other union in 1935 active in the Electric Vacuum Cleaner Company?

A. No, sir.

Q. Were you aware of the strike that took place by the Mechanics Educational Society of America in 1935?

A. Will you say that again, please?

Q. Were you aware of the strike that took place under the auspices of the Mechanics Educational Society of America, known as the MESA, in 1935?

A. Yes, sir.

Q. You knew that that organization had members in

the Electric Vacuum Cleaner Company before the strike in 1935?

A. Yes.

Q. In the course of the strike, did the MESA have members?

A. No; not that I know of.

Q. Did you call upon the American Federation of Labor representatives at that strike, or did the American Federation of Labor representatives call upon the company?

705 Mr. Spieth: I object, your Honor. I can't see that that is material at all.

Trial Examiner Ringer: Overruled. Read the question to him, Mr. Reporter.

(Last question read by Reporter.)

Mr. Orgill: If the Court please, we object to the form of the question. It is like: "When did you stop beating your wife?" He hasn't said there was any meeting with the American Federation of Labor initiated by him or by the American Federation of Labor.

Trial Examiner Ringer: Well, he will say so if there was not. Overruled.

Mr. Orgill: Probably he had nothing to do with it and knows nothing about it, but the question assumes that he does.

Trial Examiner Ringer: Read the question again, Mr. Reporter.

(Last question again read by the Reporter.)

A. I do not know—

Mr. Orgill: Wait. There is an objection.

Trial Examiner Ringer: Overruled.

Mr. Orgill: All right.

A. I don't know. I was not in on that.

Q. (By Mr. Carey) Were you aware of the conferences that were taking place between the American Federation of Labor and the management?

A. Yes, sir.

706 Q. You were aware of those conferences?

A. I knew there were conferences.

Q. At that time, you knew the MESA was active in the

Electric Vacuum Cleaner Company?

A. No, sir.

Q. At the meeting that was attended by Mr. Gordon and Mr. Toth, were you present?

A. Yes, sir.

Q. Were they successful in securing any signed cards in the American Federation of Labor?

A. There were five men called in at that time and every man signed a card.

Q. Was that in your presence?

A. Yes, sir.

Q. Did you talk to those men?

A. No, sir.

Q. You were present at the time Mr. Gordon and Mr. Toth talked to those men?

A. Yes, sir.

Q. Did you have an opportunity to talk to those men previous to that meeting?

A. I did talk to them previous to that meeting.

Q. Did you explain the contents of the contract?

A. Yes, sir.

Q. Where did that meeting take place?

707 A. That meeting took place in the office adjoining Mr. Wilson's office. That is on the first floor. That is not in my office.

Q. Was any other union ever given the opportunity of using the company's office to secure members for the Union?

A. I don't know.

Q. To the best of your knowledge, do you know of any other occasion when the office of the company was used to sign an application?

A. No, sir.

Mr. Woodle: Was that answer: "No, sir?"

The Witness: Repeat the question again.

Mr. Carey: Read the question.

(Last question read by the Reporter.)

Trial Examiner Ringer: The answer is: "No."

Q. (By Mr. Carey) After the confetence with Mr. Ramsey at which time Mr. Ramsey understood he was fired,

did you notify the foreman of the Machine Shop?

A. Yes, sir.

Q. What did you notify the foreman of the Machine Shop—that Mr. Ramsey was fired, or that he was not fired?

A. I told him he was fired.

Mr. Carey: That is all.

Redirect Examination

Q. (By Mr. Spieth) How many men approximately are employed in the Machine Shop—or, not men—how
708 many employees of the Machine Shop, roughly?

A. I would say about one hundred and sixty at that time.

Q. Now, in response to the Examiner's question, you said that you thought this arrangement about the hiring of new employees and not requiring old employees to join was in a written contract. You never saw the written contract, did you?

A. I never seen the contract.

Q. The first information that you had about the terms of that contract was after the strike was settled in 1935?

A. That is right.

Q. Was it not?

A. Yes, sir.

Q. And that information came to you by reason of being present at a meeting at which the shop representatives, American Federation of Labor representatives, and MESA representatives were present and Mr. Wilson stated the terms of the contract?

A. Yes, sir.

Q. So that all your information about it came from what you heard Mr. Wilson say at that meeting?

A. Yes, sir.

Q. You testified that a meeting of some of the men was held in an office adjoining the Mr. Wilson's office?

A. Yes, sir.

Q. Mr. Wilson was not present at that meeting?

A. No, sir.

709 Q. You didn't see him around?

A. I didn't see him around.
Q. He was out of town; was he not?
A. I imagine he was out of town; yes, sir.
Mr. Spieth: That is all.
Trial Examiner Ringer: Do I understand that you gentlemen would like a little longer noon period?
(Discussion had off the record.)
Mr. Spieth: I have one witness here. I only want to ask him one or two questions to contradict or rebut something he is supposed to have said, and then he can go back to the plant.
Trial Examiner Ringer: All right; you can put him on right now.
Mr. Spieth: Ask Mr. Waterbury to come in.

R. W. WATERBURY, called as a witness for the Respondent, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Spieth) What is your name?
A. R. W. Waterbury.
Q. Where do you live?
A. 3410 Winsford Road.
Q. What is your position with the Electric Vacuum Cleaner Company?
A. Factory Accountant.
Q. Factory Accountant.
A. Yes, sir.
Q. Do you know a man by the name of Clyde H. Boyes, who is employed by the company?
A. I do.
Q. Do you recall early in March being present at a meeting at which Louis Young and a number of other employees were present in Mr. Paulus' office?
A. I do.
Q. Did you at that meeting say to Boyes that the third floor would be pulled if he or the other men did not join the Union, the American Federation of Labor Union?
A. No, sir; I did not.

Q. And did he ask you if that meant that he would be out in the street and you said: "Yes!"

A. I didn't make any such statement.

Q. Do you recall any discussion of that kind at all?

A. No, sir.

Q. You are positive that you made no such statement?

A. Yes, sir.

Q. At that meeting or any other time?

A. Yes, sir.

Q. You never told any employees that unless they joined the Union, that they would be discharged?

711 A. No, I did not.

Mr. Spieth: That is all.

Trial Examiner Ringer: Cross-examination.

Cross-examination

Q. (By Mr. Carey) Mr. Waterbury, are you familiar with the various contracts between the American Federation of Labor and the Electric Vacuum Cleaner Company?

Mr. Spieth: I object, your Honor. I think we have gone into just one question with this witness.

Trial Examiner Ringer: I don't see how that would be material on his cross-examination. Sustain the objection.

Mr. Carey: Mr. Examiner, it appears Mr. Waterbury participated in a conference and the question was put by counsel as to what took place in the course of action at those conferences. Those conferences were based on an agreement, and therefore it is important that we have further testimony as to what took place in those conferences.

Trial Examiner Ringer: Well, I will let you go into that a question or two.

Mr. Spieth: I object.

Trial Examiner Ringer: Overrule the objection now. Had he answered that question: "Are you familiar?"

The Reporter: No.

Mr. Spieth: Read the question.

(Last question read by the Reporter.)

712 A. I am.

Q. (By Mr. Carey) Did you participate in any conferences with American Federation of Labor representa-

ves and employees of the Electric Vacuum Cleaner Company for the purpose of encouraging their members in the merican Federation of Labor?

A. I was present at such a conference.

Q. Was it the purpose of securing those employees members of the American Federation of Labor to elimite the trouble?

Mr. Spieth: I object, your Honor.

Trial Examiner Ringer: Sustained.

Q. (By Mr. Carey) In a discussion at those conferences, was it pointed out to the men that the company has contract with the American Federation of Labor Union?

A. It was.

Q. Was it explained, the contents of that contract?

A. It was.

Q. Were the men—were all the men, employees of the lectric Vacuum Cleaner Company, new employees of the mpany?

A. I couldn't say that they were.

Q. Were any of the men to the best of your knowledge d employees of the company?

A. Some of them were.

Q. Were the men advised in accordance with the greement that it was not necessary to become a member f the Union?

A. It was not put to them in just that way. The 13 men were advised it was necessary for the new employees to become members of the Union.

Q. What was the purpose of having old employees at he conference?

A. To which conference are you referring?

Q. We are still discussing the same conference at hich time you participated with the American Federation f Labor representatives and employees of the Electric acuum Cleaner Company, some of which were old employees?

A. Your question again, please.

Trial Examiner Ringer: Read it.

(Question read by Reporter as follows: "What was he purpose of having old employees at the conference?")

A. The purpose of having old employees at the conference was to be sure that they understood exactly our contract.

Q. Did any of the old employees sign application cards in the American Federation of Labor at those conferences?

A. I am not certain as to that.

Mr. Carey: That is all.

Mr. Spieth: Just one question.

Redirect Examination

Q. (By Mr. Spieth) These conferences that Mr. Carey has inquired about, am I clear that the old employees were advised that they were not required to join, but new employees under your contract would be required to join?

714 A. That is correct.

Mr. Spieth: That is all.

Mr. Lodish: I have just one question, Mr. Examiner.

Trial Examiner Ringer: All right.

Cross-examination

Q. (By Mr. Lodish) Did you at a conference, asked you about by Mr. Spieth, in which he asked you whether you said something about being out, did you at that conference or any of the others say that there might be a strike under certain circumstances, and you would all be out, or anything like that?

A. No, sir.

Mr. Lodish: That is all.

Trial Examiner Ringer: We will adjourn until two-fifteen.

(Thereupon, at 12:00 o'clock noon, a recess was taken until 2:15 o'clock p. m.)

After Recess

(The hearing was resumed at 2:15 o'clock p. m., pursuant to the taking of recess.)

(Messrs. Woodle and Wachtel not present.)

Trial Examiner Ringer: Are we ready to proceed?

Mr. Lodish: Mr. Wachtel and Mr. Woodle are not here.

Trial Examiner Ringer: They were advised at the time

the hearing was convened. Let us proceed.

Mr. Lodish: Mr. Examiner, we had made an ar-
715 rangement whereby we were to insert in the record four payroll lists. Three of such have already been inserted, and the fourth has just been handed to me. It is the payroll list of May 20th, 1937, and I am now introducing it into the record.

Trial Examiner Ringer: Is this part of an exhibit already introduced?

Mr. Spieth: No; you will remember they asked for the payrolls for 1935, beginning June; June of 1936, March of 1937, and May of 1937.

Trial Examiner Ringer: Were the others introduced as evidence?

Mr. Spieth: The others were introduced but this one was not in.

Mr. Lodish: They are introduced and are already attached to the bunch of exhibits.

Trial Examiner Ringer: This goes in with the exhibits, then.

Mr. Lodish: Yes, except that this will have to have a number. It will be marked Board's Exhibit No. 28.

(Board's Exhibit 28 so marked for identification.)

Mr. Lodish: I offer Board's Exhibit No. 28 in evidence.

Trial Examiner Ringer: Will be admitted.

Mr. Lodish: Board's Exhibit No. 28 to be associated with Board's Exhibits 12, 13, and 14.

(The document referred to was received in evidence and marked "Board's Exhibit No. 28.")

716 Mr. Spieth: And the key attached to those other payrolls applies to this. I have nothing further to offer for the Respondent, but I understood that the Federation had some testimony.

Trial Examiner Ringer: As part of the Respondent's case, or as evidence on behalf of the American Federation of Labor Union intervening?

Mr. Spieth: Intervening.

Trial Examiner Ringer: All right; we will just have to

wait, I suppose, until the others come. You are resting the Respondent's case then, as far as you know?

Mr. Spieth: As far as I know, unless they introduce something.

Trial Examiner Ringer: I am inclined to be liberal on that. If you find something that you think you have overlooked, I will permit anybody to produce that, because we want all the evidence in here. We will be informal until they come.

(Short recess.)

Mr. Wachtel: We are sorry, Mr. Examiner, that we are late, but it took us longer to get these documents than we thought it would.

Trial Examiner Ringer: That is all right. Inasmuch the purpose of obtaining these documents was to expedite the hearing, the delay is excusable. The Respondent has rested now, and you may proceed.

717 Mr. Spieth: After they get through, of course, I will want to renew my motion.

(Discussion had off the record.)

Mr. Spieth: The Respondent rests in the "C" case with the statement that there may be one matter if it is not developed in the "R" case that I would like the privilege of calling witnesses on at the conclusion of the "R" case.

Trial Examiner Ringer: I will be glad to give you the opportunity.

Mr. Spieth: I will reserve making any motion, then, until the "R" case is concluded so that I will know I have finished with my "C" case.

Trial Examiner Ringer: Now, is there any rebuttal on the "C" case?

Mr. Spieth: I would like, Mr. Examiner, to have a statement by the interventionists as to where they stand in the "C" case, whether they rest.

Mr. Woodle: I think we have no testimony to offer on the "C" case other than is already offered in the record.

Mr. Lodish: All right. No rebuttal at this time.

Trial Examiner Ringer: As I understand it now, the "C" case, as far as you know at this time, is completed with all of you introducing all the evidence you wish to

with the one reservation by Mr. Spieth, to introduce later, if he wishes to.

Mr. Spieth: And, of course, the privilege of re-
718 buttal on whatever that is.

Trial Examiner Ringer: Oh, yes.

Mr. Spieth: And also the stipulation entered into regarding the group matter.

Mr. Wachtel: At the outset of this hearing, we agreed to have the testimony for the two cases used for the two cases jointly. Then, we decided to separate the two cases. Is it my understanding properly that any testimony offered in the "R" case by the parties interested will also have some effect on the "C" case or will it be joined with the "C" case at this time, or will it still be treated generally as a matter of procedure for the Board?

Mr. Lodish: It is understood that all testimony introduced in one case will apply to the other case. That is the purpose of the consolidation.

Mr. Woodle: In other words, any testimony in the "R" case which may be relevant to the "C" case will be treated as relevant to the "C" case.

Mr. Lodish: That won't be possible because there should not be anything introduced in the "R" case that has not already been produced in the "C" case.

Trial Examiner Ringer: The "R" case, would, I presume, be more limited in scope than the "C" case, so the main feature of that is that the evidence in the "C" case will swing over into the "R" case, and I don't think
719 there will be any vice versa angle on it probably.

Mr. Lodish: That is right.

Mr. Spieth: Do I understand, then, your Honor, that any evidence introduced in the "R" case will also be applicable to the "C" case? My understanding was that the "C" case was to be tried, and any evidence was to apply to the "R" case.

Mr. Lodish: I think I can clear it up. Any evidence introduced in the "R" case from now on by anybody will apply only to the "R" case.

Trial Examiner Ringer: All right, we will proceed then with the "R" case. Is any additional evidence to be intro-

duced by the Complainant in the "R" case at this time?

Mr. Lodish: Mr. Examiner, at this time, I should like to state that in view of the understanding that all of the evidence already introduced in the "C" case which is applicable to the "R" case be considered as evidence in that case. That we have nothing further with the sole exception that we now re-offer in the "R" case not only those exhibits that were introduced and accepted, but those three exhibits which were rejected in the "C" case, and offer them in the "R" case. Namely, the list of names taken from the original list which shows the check marks on it. The affidavit which was attached thereto and the cards, the application cards of the C. I. O. group, known as Board's Exhibit No. 25, and with that we rest the "R" case.

720 Trial Examiner Ringer: You separately offer those?

Mr. Lodish: Yes.

Trial Examiner Ringer: Any objection?

Mr. Woodle: Are there any restrictions in this offer of the cards?

Mr. Lodish: Yes. The offer of the cards is made subject to the same restrictions made before, and that is that they are offered for the confidential use of the Board with no opportunity for cross-examination, whatever value is then attached to them. I might add that the Board, of course, having the physical custody of the cards has the opportunity and the privilege to compare those names with the payroll names, compare the signatures with any other lists that are introduced such as the American Federation of Labor cards and anything else that is introduced in the "R" case, but it is introduced subject to that limitation.

Trial Examiner Ringer: Any objections?

Mr. Woodle: Yes; we are certainly obliged to object to any offer of the cards under such conditions as that. We have no particular desire to cross-examine any one with reference to the cards themselves or the manner in which they were obtained, but we do feel that we should have the opportunity at least of knowing how they compare with the payroll. In addition to that knowledge being revealed to the Board, I think that knowledge should be revealed to

the other parties interested. In other words, the
721 Board has information that we don't have, and that is a rather peculiar situation in any lawsuit, either in court or before a Board.

Trial Examiner Ringer: Of course, proceedings before an administrative board are not subject to all the civil considerations that are in an ordinary lawsuit and that has been the policy of the Board on matters of a confidential nature of that sort. I will admit each of those with the objections, and Exhibit No. 25 is admitted subject to the conditions mentioned by the Regional Attorney.

(The cards referred to were received in evidence and marked "Board's Exhibit No. 25.")

Mr. Woodle: Assuming, of course, that we have an objection which has been technically put into the record and duly notified, what recourse do we have in order to be informed of the evidence against us. Presumably, this is evidence against our client with reference to whom was the majority in the shop at a particular time. We must have recourse to it in order to know what the evidence is.

Trial Examiner Ringer: Of course, the issue in an election case is whether or not there is a question of the majority on either side which may require an election. Now, it doesn't go to the issue of whether or not there actually is a majority, because that would be what an election would mean, and for that reason they go in merely to indicate the need for an election to determine which has a majority.

722 Mr. Woodle: Admitting that what the Trial Examiner has said is true, as of course it is, nevertheless, that being the issue in this case, I think that on that issue we should know what evidence is presented against us. That, as I understand it, is the chief evidence in this case, and we know no more at this particular moment than we did before the offer was made. It is a very peculiar situation; I don't know how we can defend ourselves against it.

Trial Examiner Ringer: Of course, the principle applies as to all parties in the proceedings, and with regard to any cards which might be introduced on behalf of any other

union the same principle exactly would apply.

Mr. Woodle: Our cards are open for examination. We make no secret of them.

Trial Examiner Ringer: Are you waiving that right then?

Mr. Woodle: We are waiving the right, if we have the same right, to check their cards.

Trial Examiner Ringer: Mr. Lodish?

Mr. Lodish: Mr. Examiner, I don't believe we will get anywhere by arguing the question. They have been introduced with certain qualifications. Objections are being properly taken and exceptions noted, and that settles the matter. I just want to add this: It is not particularly a peculiar situation and is one that has come up dozens of times in these proceedings. The usual case is a type
723 of this kind. I will say this for the edification of counsel: where the employer is antagonistic to the Union, and the men are afraid that the employer know that they are joining the Union or desirous of it,—assuming there are a thousand men in the plant and six hundred sign confidentially and they tell the organizer: "We don't dare disclose our names. We want to join the union." In cases like that invariably the names were introduced confidentially to the Board. They took whatever opportunity they could to check up on it. Although in those cases they did not on the basis of that evidence certify a majority, they have, where they thought it proper, certified an election. It is justice to these men that those names be not disclosed. In this case, there is an inter-Union conflict. One union does not desire that the other union see their names. They have that privilege of introducing them confidentially. They are exercising that privilege. The American Federation of Labor Union can introduce their names for public or private inspection. They also have that privilege. I think there is nothing further to be said about this matter at this time. It is not as if it was entirely an odd question before the Board. We have had this situation for two years now in a number of cases.

Mr. Spieth: I would like to take exception to part of Mr. Lodish's statement. I don't know whether he was

speaking generally or specifically in regard to his remarks concerning the employer being antagonistic to the Union.

724 Mr. Lodish: Speaking generally.

Mr. Spieth: If that is a general statement, it is all right. But if it is applicable to this case, I take exception to it.

Mr. Lodish: This is the "R" case, and the Respondent does not have anything to do with it.

Mr. Wachtel: Before the ruling is made final, I would like to tell you that in the "R" case, the only notice we have had is an allegation in the "R" petition which sets forth that the Complainant apparently represents a majority. Now, there is no testimony in this case with the exception of this allegation, backed up by a series of cards which are now asked to be kept confidential. There are two things that enter into this picture. First of all, there must be some precedent in this hearing and I don't believe that every Union that claims to have a majority before Board hearings has kept these cards confidential as a matter of right, because I have been in other hearings where these cards have not been kept confidential by any union involved. There is no question, is there, of any specific animosity, between employer and employee where the employee is afraid to assert himself, and wants his name kept out. There is no claim that they are afraid of the action the employer might take. Then, why the question of confidence or privilege? Under the rule of privilege, if we are going to follow any law of evidence as requested—

725 if a man presents his case on the stand and says he is injured, we have the right to examine him as to his injuries. You are asking the defendants or the Respondents under the "R" case to come in here blind without any evidence before them and try to set up some proof of a majority. In the hearings before this Board, all cards presented have been laid on the table and have been subject to cross-examination. If we had stipulated something about examining each of the signatures, that would be all right, but to say we do not have a right to examine the cards—there should be some proof that there might be

some danger of harm as a result of that, and that is the reason the confidence is asked. There is nothing in this case about that.

Mr. Lodish: Mr. Wachtel introduced one new point and that is that there is nothing in this case requiring confidence. The evidence in the "C" case which is embodied in the "R" case shows that a great many men—at least some men, perhaps a great many—joined the C. I. O., but didn't say anything to the American Federation of Labor leaders. They attempted to get cards to get back to work. They didn't say anything about joining the C. I. O. at that time. It shows that on certain occasions, men had been refused American Federation of Labor cards because they had been too active in C. I. O., something about somebody being called an agitator. The evidence shows that the American Federation of Labor to some extent controls the employment in this plant because of a contract they
726 have. Now, we have cards for five hundred and seventy-three people. I don't believe the American Federation of Labor and their representatives know the names of all five hundred and seventy-three. There may be dozens of those that they never suspected joining the C. I. O. What their attitude would be, I don't know. The Union has requested apparently for those reasons that the names be kept confidential. Now, that reason is analogical to the other type of case where the employer is antagonistic and I believe fully justified, and request that it be kept in confidence if they so desire. It is a privilege that they can waive, but they need not.

Mr. Wachtel: I want to raise one more point, Mr. Examiner. If that so, and there is a question of confidence and these men who signed these cards intended to have their names kept out of the picture, then why did they in a body resign or supposedly resign and submit their names and waive the privilege of confidence and forget about their so-called fear, if that has any value of any sort?

Mr. Lodish: Of course, the answer to that is the usual situation where an individual fears as an individual, he will do anything, but if he one of a group of six hundred men, he doesn't care. The segregation of these cards into

individual cards particularly now that there has been further developments in the controversy, particularly now that there is a new closed shop of May 20th, that it is
727 known that all men must belong to the American Federation of Labor in order to work there, I think it is quite obvious on the face of it that there may be justification of individual fear. Some of these men who joined the C. I. O. at that time may have regretted it by now and might be very reluctant to have their names disclosed at this time, although they did join on March 19th or 26th, and thought something would come of it.

Trial Examiner Ringer: For the same reason that they have secret ballots at the election.

Mr. Lodish: Evidently. That is why they asked for an election.

Mr. Carey: The accounts of the American Federation of Labor read into the record a portion of the rules of the American Federation of Labor Union which the testimony shows there was fear and suspicion that they may be fined to the extent of fifty dollars or five hundred dollars. There is indication that the same thing may take place in view of the circumstances that took place after these men publicly declared they resigned from the American Federation of Labor. Circumstances make secrecy necessary due to the complete cooperation between the company and the American Federation of Labor Union in the hiring and discharge of employees. The fact that the Union may be antagonistic to the C. I. O. also makes the company antagonistic to some degree through the cooperation. There might be loss
728 of position through the cooperation of the American Federation of Labor Unions with the Electric Vacuum Cleaner Company and that has been sufficiently indicated by the testimony.

Mr. Spieth: I except to that testimony so far as the Electric Vacuum Cleaner Company is concerned. Our position throughout is that we have been neutral as between the Unions.

Trial Examiner Ringer: As I understand, Mr. Carey is only referring to the possibility.

Mr. Wachtel: Certainly the Complainant is not taking

the position that the Labor Board is not going to decide on questions between two bona fide outside unions and determine whether or not all rules and regulations which apply to its members shall or ought to be enforced. The purpose of the act is to encourage the growth of unionism, and the proper representation in collective bargaining for all the employees belonging to one plant.

Trial Examiner Ringer: We could go on arguing on that for days.

Mr. Orgill: If the Court please, before we come to a final ruling, I would like to address a few remarks on this subject.

Trial Examiner Ringer: I will be glad to hear you.

Mr. Orgill: It seems to me we are overlooking the fundamental proposition in this particular controversy and that is the property rights of the people involved,
729 which are protected by the Fifth Amendment of the Constitution. Not only are the people protected by the C. I. O. to be protected, but there are others with fundamental rights here that are to be protected. These men have contracts in which they have a property right. They have a contract which was arrived at as a result of collective bargaining as the testimony already shows. In addition to that, they have additional rights. Seven or eight hundred, I think, or perhaps nine hundred or the originals, who originally deputized these men to act for them in collective bargaining, adopted and made their own this contract individually as well as collectively, thereby creating in them and in this company property rights which ought not to be disturbed unless and until it is shown that these contracts were improperly arrived at. And the very purpose of this entire proceeding is to effect that situation. What are these men seeking here? They are seeking to ask the Board to compel an election for the purpose of determining who shall act in the making of the contracts. Our contention is that we already have complied with all of the laws with regard to making the character of contracts contemplated by the Wagner Act. In addition to that, we have made individual contracts by adopting the fruits of collective bargaining and I say to

our Honor that those contracts are protected by the Fifth mendment of the Constitution, has already been declared the Supreme Court in the Virginian case and for the last time in the Jones and Laughlin matter, which is very recent and supersedes any decision by any Board. Now, you are asked to admit evidence here ncerning which we are to have no right of examination, ncerning which we are to be kept in the dark, concerning hich, if you please, we are to be gagged, and yet that ry evidence is to be used to affect our property rights d the property rights of this corporation. It may result many things. Repose has now been established. It ay terminate and end that repose. It may result in olence. It may result in loss of wages. Many things ay happen. Surely, this Board is not going to take the sponsibility of overturning those rights except upon the ost convincing evidence, and the Board as well as we entitled to have the fruits of the best that we can give em in the way of assembling carefully all of this evidence at goes in, and see to it that nothing but proper and mpetent evidence goes in to affect those rights; and erefore I want to join in the objection.

Trial Examiner Ringer: I will give you a final word that if you want to add something to it.

Mr. Woodle: The only thing I can add to what Mr. achtel has so succinctly stated is the fact that in an ob- tion of this kind the party against whom the ruling made, assuming that this objection will be sustained, no recourse, as the objecting party has in any other case on an appeal to a higher court or on further pro- ceeding before any Board or Court, for the reason that we are unable to properly prepare the evidence ch we might otherwise prepare to defend ourselves inst the evidence that is being offered by the complain- party. Now, where evidence is removed from a record objection, an exception may be properly taken and the dence that is desired to be introduced may be noted the stenographer. Where evidence is admitted over objection of a party, and it is known what that evi- ce is, he has the opportunity of cross-examining. But

in all my experience it has never been possible for any party to introduce in any case before any Board or any Commission or before any Referee or Trial Examiner or anybody else that is hearing a case, evidence against which the other party does not have the opportunity of defending himself, and I don't believe that the complaining party in this case has that right regardless of any precedents that have been set by the Board unless some evidence has been produced by the complaining party in this case to prove that they will be prejudiced in this particular case regardless of any precedents by permitting that evidence to be examined by their opponents, and there is no such evidence in this case. In fact, it is practically stated that there will not be.

Trial Examiner Ringer: Board's Exhibit No. 25 will be introduced. Overrule the objection, subject to the conditions as stated. Said Board's Exhibit to be held in the custody of the Board by its agent, the Trial Examiner. Proceed.

732 (The cards referred to were received in evidence and marked "Board's Exhibit No. 25.")

Mr. Lodish: Mr. Examiner, I just want to make an additional statement. This is no longer part of the argument. I understand that cards will be introduced by the American Federation of Labor Unions. There is some evidence that a large number of American Federation of Labor men attempted, whether the attempt was successful or not, to resign the American Federation of Labor and join the C. I. O. The Board will therefore make a comparison of—I don't know what it is, four or five hundred people who presumably signed cards in June or July, 1936, for American Federation of Labor and March 19, 1937, for C. I. O. In addition to that, I would like to state on the record that I am sure the Board and the Trial Examiner would appreciate having for their assistance a list of employees' signatures, if such is available. If the Respondent has signature cards in duplicate or anything of that kind which they can loan to the Board for their use in examining these cards, I am sure the Board would appreciate

t if such assistance were possible and I would just like o throw that suggestion out.

Trial Examiner Ringer: Do you have any additional vidence now?

Mr. Woodle: May I ask whether there are any dates n these cards that are offered in evidence?

Mr. Orgill: They are confidential. How are you 33 going to find that out?

Mr. Lodish: Yes; there are.

Mr. Carey: Mr. Examiner, the testimony indicated where these cards were signed. They were signed during he sit-down strike and the Wednesday previous to that. All the cards were signed since the Wednesday previous o the date of March 18th.

Mr. Orgill: Are you testifying now? If you are, let's ake the stand and cross-examine.

Trial Examiner Ringer: He is just volunteering information.

Mr. Orgill: He is making statements that he doesn't now a thing about.

Mr. Lodish: The answer is: "Yes." With that, Mr. Examiner, we rest the "R" case as well as the "C" case. Just one more statement so there will be no misunderstanding or exception in the matter. The C. I. O. Union claims that the entire plant is an appropriate unit; they do that both in the "C" case and the "R" case. The company apparently takes no stand one way or the other except to admit in their answer that the entire plant is an appropriate unit. And in view of that fact, of course, the American Federation of Labor Union realizes that if they desire to introduce evidence of separate units, they have the right to do it. I just mention that in case there is any misunderstanding about it.

Trial Examiner Ringer: You may proceed then, the American Federation of Labor Unions, on the "R" case.

734 Mr. Woodle: Inasmuch as we have no pleading in this case on behalf of our clients, I believe it might be appropriate at this time to make some statement on their behalf as to our views of the situation, and our de-

fense to the complaint that is filed here. The complaint as I understand it is not directed specifically against our clients but is couched in terms against the employer and is to the effect that the employer has refused to recognize the United Electrical and Radio Workers of America, Local No. 720 as a unit for collective bargaining. Now, on behalf of the American Federation of Labor, Affiliated Unions, I want to say to the Trial Examiner that our claim is this: that the American Federation of Labor Affiliated Unions had a contract with the company as has been stated in evidence beginning in 1935, June of that year; that from June of 1935 up until the present time and continuing, as a matter of fact, for almost a year beyond the date of this hearing. A contract that has been in existence and is in existence with the Affiliated Unions of the American Federation of Labor. There has been at no time during the existence of that contract according to any evidence which has been introduced in this case any controversy which has arisen regarding collective bargaining on any of the points with which these contracts are concerned except at the time at which the contracts were made, and at those times any controversies that had arisen were resolved in the contracts themselves in addition to the
735 fact that there were no controversies concerning which collective bargaining might have been carried on. We offer the additional fact that in June, 1935, June, 1936, and again in May, 1937, the company was presented with specific written evidence of the fact that the American Federation of Labor Affiliated Unions did represent a majority of the employees in that shop, and it is apparently the contention of the Complainant through the Board in this case, and no other evidence has been introduced to the contrary that, if they did at any time represent a majority of the employees, in assuming that there is any support whatever for the claim that they have made such representation, but the United Electrical and Radio Workers of America was in effect only for a period of time beginning about March 19th, 1937, and ending about April 5th of the same year. There has been no evidence placed in the record and that will be one of the defenses in this case. There

as been no evidence placed in the record that after the th of April or about the 5th of April, 1937, the United Elec- rical and Radio Workers of America pretended that they epresented the majority of the employees in that shop or ought to enter into collective bargaining with the man- gement of the company upon any points whatsoever, herefore, as I understand, we only have to defend our- elves against the charge that for a short period of approxi- nately two or three weeks, the United Electrical and Radio Workers had a number of members which they claim
36 to be a majority in this particular plant, and I think that as I understand, it states the only case against hich we have to defend ourselves, and our defense will e that at that particular time, they did not have a ma- ority for the reason that the representation for the Ameri- an Federation of Labor Affiliated Unions secured in 1936, ontinued for a period of one year beyond the time to which American Federation of Labor Affiliated Unions were iven the power to represent a majority of the people in hat plant, that employer was never advised of the fact hat the members of those Unions had resigned from those Unions; that the Unions had never been advised of the act that the members of those Unions had supposedly re- igned from those Unions; and that if any action was taken t any time by any members of those Unions to attempt to esign from those Unions, that action was not effected be- ause it was merely a matter of some closed operations that ook place in or between some people that were in that Hall t that particular time, and what took place in that Hall never went beyond the confines of that Hall and no one was ever notified of that fact.

Trial Examiner Ringer: Proceed then.

(Discussion off the record.)

Trial Examiner Ringer: We will take a short recess.

(Recess.)

JOHN TOTH, called as a witness for the Ameri-
737 can Federation of Labor, being first duly sworn, tes- tified as follows:

Testimony of John Toth

Direct Examination

Q. (By Mr. Woodle) Your name is John Toth?

A. That is correct.

Q. What is your adress?

A. Home address?

Q. Yes.

A. 13601 Union Avenue.

Q. You are an Organizer and agent for the International Association of Machinists?

A. That is right.

Q. For how long have you been engaged in that capacity?

A. Since August, 1936.

Q. You work in the City of Cleveland?

A. That is correct.

Q. In your capacity as an Organizer for the International Association of Machinists, you had some contact with the plant of the Electric Vacuum Cleaner Company?

A. That is right.

Q. When did your contact with that plant begin?

A. Approximately December of 1936; I couldn't give an exact date without checking up on it.

Q. Will you tell us what your duties were in that plant?

A. Well, as a business representative I have to go in there and take up complaints for the membership, also
738 sign new employees that were employed and see that the rest of the membership keeps up their dues and so forth.

Q. About how much of your time approximately did you spend there?

A. Well, I generally make it my business to get in there two or three times a week and spend a few hours at a time; sometimes practically all day.

Q. Now, you had, I believe, free access to the plant; is that correct?

A. That is correct.

Q. And that free access to the plant was extended to you by the management?

A. That is right.

Q. In December, 1936, when you took charge of the work out at the Electric Vacuum Cleaner Company, were you advised of an agreement that was in effect between the Electric Vacuum Cleaner Company and the American Federation of Labor Affiliated Unions?

A. I was.

Q. And by whom were you advised of that agreement?

A. Mr. Gordon who has formerly been handling this work.

Q. That is Ralph Gordon?

A. Mr. Ralph Gordon.

Q. Did you see the agreement yourself?

A. Yes. I have a copy of the agreement in our files.

Q. That is, which agreement?

739 A. The written agreement between the management and the American Federation of Labor.

Q. Which agreement—dated what?

A. The 1936 agreement.

Q. That was the agreement in force when you first went out there?

A. That is right.

Q. Did you know at that time when you started your work out there that there was any other arrangement, or did you know whether there was any other arrangement between the Union and the management other than that imposed in that agreement?

A. I was informed by Mr. Ralph Gordon that there was a verbal agreement existing between the management and the respective organizations.

Mr. Lodish: I object to that.

Trial Examiner Ringer: On what grounds?

Mr. Lodish: Mr. Gordon is and was present, and this is hearsay of a type that is very easily—

Mr. Woodle: Mr. Gordon will testify.

Trial Examiner Ringer: All right; let him testify.

A. I was informed by Mr. Ralph Gordon that there was an existing agreement, a verbal agreement, also to the effect that the employees of the Electric Vacuum Cleaner Company were to be members of the respective craft organiza-

tions in which they belonged.

740 Q. (By Mr. Woodle) Were required to be?

A. That is right. That is, the new employees that come in.

Q. Now, do you know whether there were any new employees hired by the Electric Vacuum Cleaner Company in December of 1936?

A. Well, I can only speak for my organization. There were new employees hired in the Machine Shop from time to time.

Q. About how many people were employed in the Machine Shop?

A. At this particular time, I would say around one hundred and twenty-five, somewhere thereabouts.

Q. When you say: "this particular time," you mean December of 1936?

A. That is right.

Q. That is when you started?

A. Yes.

Q. What other employees out there came under your supervision?

A. The Grinding Room on the third floor, the Ball Bearing Department, and the Tool Room, and also the Die Casting Department.

Q. And altogether about how many people were employed in those departments when you started work in December?

A. I would say approximately in the neighborhood of three hundred.

Q. Do you know whether or not there were a sub-
741 tantial number of new employees hired there in December of 1936, or in January of 1937?

A. I would say there were around fifty or sixty new employees hired between the time that agreement was made and when I took charge of the work out there.

Q. Did you solicit—

Mr. Lodish: Just a moment. I will object to that. He has testified fifty or sixty between the time the agreement was made until he got there. That was before he got there.

Mr. Woodle: That is not the period I was referring to.

Trial Examiner Ringer: Let that go out then.

Q. (By Mr. Woodle) The period I was referring to was December of 1936 and January of 1937. That was after you started there. Were there a large number of new employees hired?

A. Some new employees, but I couldn't give you a count on them.

Q. I see. Did you solicit the new employees that were hired for membership in the Machinists Union?

A. I did.

Q. It has been testified in the record, Mr. Toth, to the effect that you called upon Mr. Paulus, the Superintendent of the plant, and told him that you were having some trouble in getting these new men to sign Union cards; do you recall whether or not—

A. I merely called Mr. Paulus' attention to the
742 fact that according to our agreement, these new men that were hired should have become members of our organization after a certain period of time which was stipulated in that agreement.

Q. Can you tell us about when you told Paulus that?

A. I would say about January of 1937.

Q. Do you know whether or not he did anything about it?

A. Supposedly he had talked to some of these people.

Q. Did he ever talk to any of them in your presence?

A. Yes; on several occasions.

Q. When were these occasions, as nearly as you can recall?

A. One was in about January and the other one I would say about the middle of February, when I called his attention to it again.

Q. About how many employees did he talk to at that time?

A. There were a number of groups; I would say there was about seven in one group at one time; about two or three in the other group.

Q. And what did he tell them about the requirements of membership in a Union?

A. He just merely told them that that was the agree-

ment between the management and the respective unions that they are to become members of the respective organizations after they have spent the three weeks probationary period in the plant.

Q. Did any of those men sign Union cards then?

743 A. I don't recall that they signed in his presence, although some of them did sign in the plant later on.

Q. Did you talk to him about this matter in March of 1937?

A. Yes, I did.

Q. And what happened in March of 1937 with reference to conferences between Mr. Paulus and yourself and employees of the plant?

A. They were again called in, some of the people, I can't name them, I didn't know them that well, but they were again called in and reminded of the fact that according to our agreement they were to become members of our organization.

Q. Do you know who was called in at that time or about how many?

A. I would say there was four that I remember in one group. I don't recall the number in the other group. There were two groups called in the Machine Shop.

Q. Were they told the same thing that the other men had been told previously?

A. That is right.

Q. Did you answer that?

A. They were told the same thing.

Q. In December of 1936, when you started to work there, Mr. Toth, was there any controversy between the employees under your control—that is, those belonging to the Machinists Union, and the management, regarding

744 wages or hours or working conditions or any other matters?

A. I don't recollect that there was any controversy.

Q. Was there any controversy that you knew of in March of 1937 regarding either wages, hours, or working conditions out at the plant?

A. Not to my knowledge.

Q. If there was any, you knew nothing about it?

A. (No answer.)

Q. As the agent and representative of the Machinists Union, if such a controversy had arisen among the members of your Union, and they were dissatisfied with their wages, hours, and working conditions, would that have been brought to your attention?

A. It would have.

Q. Now, you recall the period during which the plant was closed at the beginning of about March 19th of this year?

A. I do.

Q. During the time the plant was closed, did you attend any conferences with the management?

A. Yes, I did.

Q. About how many?

A. Oh, I would say about three of them.

Q. Was there such a conference which took place on Saturday, April 3, 1937?

A. Yes, there was.

745 Q. Where did that take place?

A. In Mr. Spieth's office.

Q. Who was present at that time?

A. Business representatives of the several organizations represented in the plant; also Grand Lodge Representative Peterson of the Machinists. Mr. Tuteur, I believe, the elder Mr. Tuteur. I don't recall whether the younger one was there or not. And, of course, Mr. Spieth also.

Q. Was there any reference made at that meeting to the contract or contracts in existence between the Union and the company? Was anything said at that time about the contract?

A. There was a reference made to the agreement.

Q. What was said about those contracts at that meeting; do you remember?

A. Well, it was restated again that that agreement was in force and also the verbal agreement was restated between the management and the different organizations.

Q. And what if anything was said by the representatives of the Union as to what should or should not be done, and what was said by the management as to what should be

done, as to reopening the plant?

A. It was decided at that meeting that the plant should be reopened the following Monday, and both the representatives of the Union and the management agreed to inserting a certain ad in the da y papers and also the Sun-
746 day paper to notify all employees of the fact that the plant will be reopened and that they should return to work.

Q. This meeting took place in Mr. Spieth's office, I believe?

A. That is right.

Q. And it was on the morning of April 3rd?

A. Yes; I would say it started about ten o'clock in the morning.

Q. And it was following that meeting that the advertisements appeared in the newspapers on the night of April 3rd and on the next day, which was Sunday?

A. That is correct.

Q. Now, at that meeting what arrangements if any were made with reference to the mechanics of the reopening of the plant; that is, the manner in which the men were to go back to work?

A. It was decided that everyone that goes back to work will get a relief card from their respective unions before they go back to work.

Q. Where and how were they to obtain such cards?

A. We had notified them that the following—that is, that the following Sunday, following this meeting Saturday, we would be down in our offices, the respective business representatives, and issue such cards, and also we would open up a place across from the plant for the purpose of issuing these clearance cards, which was done.

Q. You opened a place across from the plant?

747 A. That is right.

Q. That was in a house, I believe?

A. In a private home.

Q. And that was right across from the plant gate; was it?

A. Well, just a little south of the plant gate.

Q. Who was there at that office?

A. I was there all during that week, the better part of that week.

Q. What were you there for?

A. To issue these releases for anybody that wanted to go in to work.

Q. For the employees of the Electric Vacuum Cleaner Company?

A. For the employees of the Electric Vacuum Cleaner Company, that is right.

Q. Did anybody else assist you in that work?

A. Well, Mr. Trask, I believe, is the gentlemen's name. He was there for a short period of time as some of the cards will indicate, and Mr. Ledasil was also there, a representative of the Federal Union.

Q. Did you participate—strike that out. Some time after the plant reopened, Mr. Toth, negotiations were undertaken for a new contract to be effective in 1937 and 1938; did you know about those negotiations for the new contract signed this year?

A. Yes, I did.

748 Q. Did you take part in any of them?

A. I believe Mr. Gordon attended most of those meetings.

Q. Were you present at any meetings at which the provisions of this new contract were read to or discussed with these employees?

A. I was present at the meeting held out on Holmes Avenue where this new contract was read to the employees at a called meeting.

Q. What place on Holmes Avenue did this occur?

A. At Slovenian National Hall.

Q. About how many people were present at that meeting?

A. I couldn't say the capacity of the Hall, but the Hall was jammed and there was people standing all over that couldn't be seated.

Q. Were they all employees of the Electric Vacuum Cleaner Company?

A. Yes, sir.

Mr. Lodish: Objection. If he knows.

Trial Examiner Ringer: Do you know they were all employees?

The Witness: It was a called meeting, your Honor, for the employees of the Electric Vacuum Cleaner Company. I don't know every man personally, but it is reasonable to believe that they were all employees.

Mr. Lodish: That is what I thought was the basis of the answer. It is an assumption.

749 Trial Examiner Ringer: Leave it in for what it is worth.

Q. (By Mr. Woodle) What took place at that meeting, Mr. Toth?

A. The agreement was read and explained to these people, and the majority approved and signed these agreements.

Mr. Griff: I object to the conclusion.

Trial Examiner Ringer: Overruled.

Q. (By Mr. Woodle) Do you know where those signed agreements are now?

A. Yes, I do.

Q. Where are they?

A. They are in our possession in the Machinists' office.

Q. At the Metal Trades Hall?

A. That's right.

Trial Examiner Ringer: We will take a short recess at this time.

(Short recess.)

Trial Examiner Ringer: Let us proceed, gentlemen.

Q. (By Mr. Woodle) This agreement, Mr. Toth, that you have been telling us about that was signed at the Slovenian Hall, you saw that before that night; didn't you?

A. I did.

Q. That was discussed with the management before that night?

A. The day previous to that it was discussed with the management and the general shop committee.

Q. You were present when it was discussed with the management?

750 A. I was.

Q. That was on May 18th?

A. On a Tuesday, that is right, the 18th.

Q. The 18th?

A. The 18th of May.

Q. And the meeting at the Hall was May 19th?

A. That was Wednesday, the following day.

Q. Before this contract was submitted to the employees, had it been approved by the management?

Mr. Lodish: Object.

Trial Examiner Ringer: Overruled.

Mr. Lodish: Asking for a conclusion.

Trial Examiner Ringer: Overruled.

A. The management approved the agreement and instructed us that if the membership approved it, it was all right with them to go ahead and sign it.

Q. (By Mr. Woodle) And after the management approved the form of the agreement or the provisions of the agreement, I believe printed copies were made up?

A. That is right.

Q. And when you say that the agreement was signed by members present at the Hall, that evening, you men that they all signed the same agreement, or that each one signed a different agreement?

A. Each one received an agreement which was made up in duplicate. The member who signed one handed one in and kept one for himself, an exact duplicate of what he signed.

Q. That agreement—for the purpose of the record, that agreement has been attached to the Respondent's answer and marked Exhibit A, concerning which you have testified. Now, to come back for just a moment to the time when the plant reopened on April 5th. You had made arrangements, I believe, with the company regarding the mechanics of handing out clearance cards to the men?

A. We did.

Q. What was your understanding as to who was entitled to receive one of these clearance cards and under what conditions?

Mr. Lodish: I object.

Trial Examiner: Sustained. What was said.

Q. (By Mr. Woodle) Were any stipulations made be-

tween the management and the Unions as to who was to receive a card and under what conditions?

A. Any one who applied for a clearance card was to receive a card under the stipulation of the management, between the management and the Unions.

Mr. Woodle: That is all.

Trial Examiner Ringer: Cross-examination.

Mr. Lodish: I just have one or two questions.

Cross-examination

752 Q. (By Mr. Lodish) Mr. Toth, you said at one time something about one hundred and twenty-five men, then another time something about three hundred, and it is not quite clear to me how many were involved in your jurisdiction. Now, which was it?

A. It is around three hundred, but I was referring to the one hundred and twenty-five men in the Machine Shop direct.

Q. But in addition to the one hundred and twenty-five in the Machine Shop, there are one hundred and seventy-five others who come within your jurisdiction?

A. That is correct.

Q. I see. Now, does that number of three hundred apply to December, 1936? Was that the number on that date when you first started there?

A. I couldn't say as to that, but it would apply to about March, 1937.

Q. Now, going back to December, 1936, when you first were introduced to that job at that place, how many men were working there who were eligible to your Union; do you know?

A. I would say there were about three hundred.

Q. And how many belonged to your Union?

A. Well, with the exception of about seventy-five in the Machine Shop, I would say.

Q. You would say what?

A. That they belonged to our organization.

Q. All of them?

A. Yes.

753 Q. So in the Machine Shop seventy-five out of

one hundred and twenty-five did not belong to the organization?

A. That is right.

Mr. Lodish: That is all.

Redirect Examination

Q. (By Mr. Woodle) Let me ask you this, Mr. Toth. How many different departments were there out at this plant; do you know?

A. The departments that I represented myself?

Q. Well, give us those first that you represented yourself.

A. Well, there was five all told.

Q. And was the nature of the work in each of these departments different? What determined whether a certain portion of the plant was regarded as a separate department; do you know?

A. Just the line of work that they were doing, but they were all machinists that I represented.

Q. When you say: "the line of work that they were doing," what do you mean by that?

A. Well, I would classify them as punch press operators, screw machine hands, and grinder hands, and so forth, die casters.

Q. But they all operated—

A. Machines.

Q. —machines?

A. That is right.

Q. And all those persons who operated machines came under the supervision or within the scope of the International Association of Machinists; is that it?

754

A. That is correct.

Q. Do you know what other types of work there was done at the plant or regarding any other departments?

A. Yes; there was Assembly Department which belongs under the jurisdiction of another Union. Polishers, Metal Polishers. Platers. Molders. Engineers and firemen.

Q. The molders did not operate machines; is that

right?

A. Well, they are not construed as such.

Q. And the Platers and Polishers did not operate machines?

A. They belong in another outfit. They don't operate machines in the sense that machinists do.

Q. Can you give us the distinction between the type of work that is done by these two groups of employees, the platers—

A. Or the polishers?

Q. Yes.

A. And the machinists?

Q. Yes.

A. Well, anybody that is working on the polishing wheel of course belongs to the polishers, of course. They burnish or polish metal where we do stamping of a metal or turning up metal, and it belongs to a different jurisdiction.

Q. In the organization of the American Federation of Labor, has provision been made for including em-
755 ployees doing these types of work in different organizations?

A. That is correct.

Q. And there is a separate organization, is there, for polishers and platers?

A. That is right.

Q. A separate organization for machinists?

A. That is right.

Q. A separate organization for molders?

A. That is right.

Q. A separate organization for pattern makers?

A. That is correct.

Q. And so forth?

A. Yes.

Q. According to the nature of the work that they do?

A. That is right.

Q. Did that type of separate organization hold true of the work out at the Electric Vacuum Cleaner Company?

A. It did. We had a craft organization.

Mr. Woodle: That is all.

Cross-examination

Q. (By Mr. Carey) You are aware, you state, of the agreement that was reached in 1936?

A. I have seen the agreement, read the agreement, yes.

Q. You were aware of the verbal agreement?

A. Yes, I was.

756 Q. What was the length of time that that agreement was to remain in effect?

A. The length of time of the verbal agreement?

Q. That is right.

A. Was to remain in effect as long as the written argument was in effect.

Q. That is, the written agreement of 1936?

A. That is right.

Q. When was that agreement to remain in effect?

A. From June 23, 1936, to June 23, 1937, I believe, is the length of the agreement.

Q. You state another agreement was negotiated with the management. When was that negotiated?

A. In May, 1937.

Q. Was that previous to the time the other agreement terminated?

A. It was.

Q. When an employee did not join a Union, what was your course of action?

A. I don't get you.

Q. Did you at any time call Mr. Paulus and tell him that some of the employees did not join the Union?

A. I did.

Q. What did Mr. Paulus do to assist you in getting them to become employees of the Union?

757 A. Mr. Paulus merely told them what the agreement consisted of, that they were to become members of the Union if they were to be employed at the Electric Vacuum Cleaner Company.

Q. You stated that Mr. Paulus on one occasion in your presence called seven men into an office?

A. I did.

Q. Do you recall the names of those seven men?

A. I can't say that I do.

Q. Do you know those seven men?

A. I may know them if I see them.

Q. They were working in what department?

A. Down in the Machine Shop.

Q. Were they all new employees of the Electric Vacuum Cleaner Company?

A. That I couldn't say.

Q. Do you know whether any of them were new employees of the Electric Vacuum Cleaner Company?

A. Well, they were new in this respect, that they were there over the period of the three week period that was agreed upon that they would have to join the Union after that.

Q. Were any of them employees of, say, seven or eight years?

A. That I don't know.

Q. Did you question whether they were?

A. No, I didn't.

Q. Did Mr. Paulus explain the agreement to them at that time?

758 A. He did.

Q. Was there any question as to whether they were new employees of the company or old employees?

A. No; there were no questions to that effect.

Q. Was there anything to indicate that there was a difference between new employees and old employees at the conference?

A. There was not.

Q. Does your organization have other agreements with other companies?

A. We have.

Q. Do you have any of the nature of this agreement that was negotiated in 1937?

A. Do you have reference to a closed shop agreement may I ask?

Q. No; I have reference to the individual agreement that is signed by the individual.

A. No; to my knowledge, this is the first case of this kind.

Q. Was there any purpose in changing the procedure

of your organization in this case?

A. None that I know of.

Q. You stated in your testimony that you attended a conference in Mr. Spieth's office at which time Mr. Tuteur attended; is that true?

A. I believe Mr. Tuteur was there.

Q. You stated that an ad was drawn up to be
759 placed in a newspaper?

A. That is correct.

Q. Was that done in the presence of the company management?

A. That was agreed upon between the representatives of the different organizations, and if my memory serves me right, the representatives of the company.

Q. Do they participate in making the wording of the ad?

A. I can't say as to that, because when I saw the ad it was written.

Q. Did you see the ad at the conference?

A. That is right.

Q. It was completely written at that time?

A. That is right.

Q. Was it submitted for inspection to those who participated in the conference?

A. It was.

Mr. Carey: That is all.

Trial Examiner Ringer: Any other questions?

Mr. Orgill: I have one, Your Honor, and perhaps if I can do a little discussing off the record I can shorten it up.

Trial Examiner Ringer: It may be off the record.

(Discussion had off the record.)

Cross-examination

Q. (By Mr. Spieth) Calling your attention to this so-called contract that you have just testified to as be-
760 ing Exhibit A attached to the answer, that is the form of the contract that was ultimately signed by the company and the Union?

A. That is right.

Q. And that is the contract that ultimately became the contract of May 20th. This Exhibit A is a copy of a proposed form that was submitted to the members at that meeting for approval and at the time it was submitted at that meeting, it had not yet been signed by the company?

A. No. The company signed it after it was approved by the members.

Q. The company signed it on the 20th and the individual representatives of the Union signed it on that date. Now, one other question. Mr. Carey asked you about a discussion with Mr. Paulus. Isn't it a fact that in that discussion, Mr. Paulus stated to the men that he was talking to the men who had been with the company since 1935 didn't have to join a Union, but all new men had to join?

A. That is correct.

Q. Now, the discussion was had relative to the issuing of clearance cards. Isn't it a fact that the understanding with the management was that all old employees could obtain clearance cards without being required to join the Union?

A. My understanding was that anybody who applied for a clearance card would be issued a clearance card.

Q. And old members who did not come under the
761 contract were not required to get a card?

A. That is right.

Mr. Spieth: That is all.

Trial Examiner Ringer: I would like to ask a few questions.

Examination by Trial Examiner Ringer

Q. (By Trial Examiner Ringer) Do I understand that the understanding was that any employee who asked for a clearance card would get it?

A. That is right.

Q. Regardless of any activity with the C. I. O.?

A. That is correct.

Q. And were any refused on account of having been connected with C. I. O. activities?

A. Not to my knowledge.

Q. You don't know, then?

A. No.

Q. And so anybody that came for a clearance card after the 5th of April there so far as you know and asked for it, got it if he was an employee?

A. That is correct.

Q. You don't know of any men being sent back and forth from downtown out to the plant and trying to get clearance cards?

A. Well, as far as that is concerned, they were to be absorbed as fast as the plant gets under operation, because the plant didn't start all at once with all its em-
762 ployees. They might have been out there and back.

Q. But I am referring to attempting to get clearance cards. To get a clearance card would not depend at all on whether the plant was open in that particular department. In other words, a man could get a clearance card and use it whenever he could get in?

A. That is correct. He could get a clearance card, but that would not mean that he could go to work at that particular time, because he could not be absorbed.

Q. You never instructed any of the officers of the company at any time to discharge any men on account of not becoming members of the American Federation of Labor Affiliated Locals; did you?

A. No, sir.

Q. You never did at any time?

A. No, sir.

Q. In other words, if a man refused to join the American Federation of Labor Affiliated Local, you didn't do anything about it?

A. No.

Q. You didn't ask anything to be done about it?

A. No.

Q. During all the time you were there?

A. That is right.

Trial Examiner Ringer: That is all.

763 Cross-examination

Q. (By Mr. Carey) Was it necessary to have those

clearance cards approved by the craft representative?

A. It was.

Q. Were all cards approved by the craft representative or were some refused approval?

A. They were all approved that asked for it.

Q. To the best of your knowledge?

A. To the best of my knowledge.

Q. Did you reject any?

A. None that I know of.

Q. Did you require the members of your organization to show a paid-up card, that is a paid-up book, in your organization?

A. No, sir. Not those that were old employees of the company.

Q. Did you require the new employees to show a paid-up card?

A. The new employees had to sign up applications or show that they were members of the organization.

Q. Did you as a representative of the machinists recommend any new employees of the company to replace some of those that would not sign up?

A. No, I didn't.

Q. Were there any new employees hired, to your knowledge, April 5th?

A. There might have been.

Q. Were any, to your knowledge?

764 A. I think so.

Q. Would it be necessary for them to come to you for a clearance card if they were a new employee, April 5th?

A. Yes, sir.

Q. You would know if any new employees were hired in the departments under your jurisdiction?

A. I would.

Q. How would you know that?

A. Because I would have to ask them for their book or some way of showing that they were members of the organization.

Q. And if they could not show it, what would happen then?

A. They would sign up an application to join the organization.

Q. Were there some new employees who were hired April 5th?

A. There may have been, yes.

Mr. Carey: Mr. Examiner, it appears to me the witness is not responsive on the question. He would be the one to know whether or not there were new employees hired on April 5th. I asked a direct question: were there new employees hired on April 5th, and he says: "There may have been."

Trial Examiner Ringer: Well, ask him another question if you want to make it more definite.

Q. (By Mr. Carey) Were there new employees hired April 5th?

A. Well, that is—I would say there were, yes.

Q. At the meeting that was held at Slovenian National Hall, there was a called meeting of the employees of
765 the Electric Vacuum Cleaner Company. Was there any method of determining whether or not they were employees of the Electric Vacuum Cleaner Company?

A. There was.

Q. What was the method used?

A. By checking their books or cards.

Q. Were those books and cards checked?

A. Yes, sir.

Q. Did anyone that attended that meeting have a book or a card in an American Federation of Labor Union?

A. I couldn't testify to that. I didn't check all of that.

Q. You did testify that they were required to show an American Federation of Labor card or book?

A. That is correct.

Q. Were there others at the Hall attending that meeting that were not employees of the Electric Vacuum Cleaner Company?

A. Not to my knowledge.

Q. Were there American Federation of Labor representatives that were not employed at the Electric Vacuum Cleaner Company?

A. American Federation of Labor representatives that

were not employed by the Electric Vacuum Cleaner Company?

Q. Yes, sir.

A. Naturally the business representatives are not employed by the Electric Vacuum Cleaner Company, and we were all there.

Q. You were all there?

766 A. Yes.

Q. Do you know how many were there?

A. I would say roughly estimating in the neighborhood of six hundred and some.

Q. Of the representatives. How many representatives?

A. About five or six, I would say.

Q. Would it be possible for C. I. O members who were not members of the American Federation of Labor to be present at the meeting?

A. It may be possible.

Mr. Carey: That is all.

Trial Examiner Ringer: Next witness.

(Discussion off the record.)

Mr. Lodish: Mr. Examiner, the counsel for the American Federation of Labor wishes to introduce into the record a letter sent by Mr. Julius Tuteur, President of the Electric Vacuum Cleaner Company, to Mr. Ralph Lind, June 12, 1936. I stated to them and am stating now for the record that I have no objection to introducing it in this fashion, without bringing Mr. Lind here, that I am not objecting to the authenticity. However, I will make a general objection to its materiality and relevancy.

Trial Examiner Ringer: Mark it as an exhibit.

Mr. Woodle: We are not offering it as an exhibit. I would like to read it into the record. It relates to the

767 existence of a closed shop.

Trial Examiner Ringer: With reference to reading it into the record, I had better read it before I do anything about the objection to it.

(Trial Examiner Ringer examines the letter referred to.)

Trial Examiner Ringer: On what theory are you offering that?

Mr. Woodle: There has been some controversy as to whether together with the written contract there was a verbal agreement as well between the Unions and the company on the question of a closed shop. This letter addressed to the representative of the Board itself is certainly evidence of the fact that there was a closed shop contract at the time that we say there was in June, 1936. It is very material.

Trial Examiner Ringer: What is your theory as to why it is not, Mr. Lodish?

Mr. Lodish: I have no particular quarrel with it. I object to its materiality on the ground that it doesn't bind anybody.

Mr. Orgill: It supplements the testimony already offered.

Mr. Lodish: It is a letter from the President of the company to the Director of the National Labor Relations Board of the Eighth Region.

Mr. Carey: It is not addressed to Mr. Lind as a Director of the National Labor Relations Board Re-
768 gional Office. It is addressed to Mr. Lind, not stating the capacity of Mr. Lind. The fact that it was a violation of the law—if it was a conciliation program and entered into by the Board, it would be different in my opinion.

Mr. Lodish: My objection is merely that it doesn't bind anyone.

Trial Examiner Ringer: Overruled.

Mr. Lodish: This is a letter on stationary, printed at the top are the words "Electric Vacuum Cleaner Company, Incorporated, Cleveland, Ohio." Then, with a rubber stamp, "Copy to Mr. Ray Muehlhoffer, Metal Trades Council, 1000 Walnut Street, Cleveland, Ohio." Then in type, the date "June 12, 1936. Mr. Ralph Lind, Guarantee Title Building, Cleveland, Ohio. Dear Mr. Lind: We wish to advise that we are at the present time operating under a written agreement with certain A. F. of L. Unions a copy of which agreement is now in your possession.

We further wish to advise, in confidence, that we said, at the time we signed the written agreement with these

said Unions, orally, that each new employee hired thereafter would be required to become a member of one of the A. F. of L. Unions within two weeks of date of employment.

We have continuously since that time carried out both verbal and written agreement. Very truly yours, Electric Vacuum Cleaner Company, Incorporated." In ink, signed by "Julius Tuteur." Below that in type the word
769 "President." In the lower left-hand corner are the initials "J. T.; B. C."

(Discussion had off the record.)

Mr. Lodish: I will state for the record that that letter was received and is now reposing within the files in our office.

Trial Examiner Ringer: Next witness.

(Mr. Gordon took the stand.)

Trial Examiner Ringer: Will this witness testify at some length?

Mr. Woodle: Oh, yes; probably an hour or more.

Trial Examiner Ringer: I suggest then that we adjourn until morning.

(Discussion off record.)

Trial Examiner Ringer: We will adjourn until nine o'clock tomorrow morning.

(Thereupon, at 4:30 o'clock p. m., June 10, 1937, the hearing in the above-entitled matter was adjourned.)

Testimony of Ralph G. Gordon

770 Room 2, New Court House,
Cleveland, Ohio,
Friday, June 18, 1937.

The above-entitled matter came on for hearing, pursuant to adjournment, at 9:10 o'clock a. m.

Before:
William P. Ringer: Trial Examiner.

APPEARANCES:

Harry L. Lodish, Regional Attorney, on behalf of the National Labor Relations Board.

L. C. Spieth and H. A. Spring, 1568 Union Trust Building, Cleveland, Ohio, on behalf of the Electric Vacuum Cleaner Company, Inc.

Sam H. Griff, 610 Public Square Building, Cleveland, Ohio;

James B. Carey, 1133 Broadway, New York, New York, on behalf of United Electrical & Radio Workers of America, Local 720.

Edwin F. Woodle and Bernard Wachtel, 318 Leader Building, Cleveland, Ohio, on behalf of A. F. of L. Affiliated Unions.

John H. Orgill, 1000 Guarantee Title Building, Cleveland, Ohio, on behalf of Cleveland Federation of Labor.

771 PROCEEDINGS.

Trial Examiner Ringer: May we proceed now?
Mr. Woodle: We will call Mr. Gordon.
(Mr. Gordon takes the stand.)

RALPH G. GORDON, called as a witness for the American Federation of Labor, being first duly sworn, testified as follows:

Testimony of Ralph G. Gordon

Direct Examination

Q. (By Mr. Woodle) Mr. Gordon, you are a Business Agent of the Machinists Union?

A. Yes, sir.

Q. You hold the same position now that you did in 1935?

A. That is right.

Q. And as a Business Agent of the Machinists Union, what are your duties, generally?

A. Organize membership; take care of their grievances; work their contracts out; general labor work.

Q. In your capacity as Business Agent of the Machinists Union, you came in contact with the Electric Vacuum Cleaner situation; did you not?

A. Yes, sir.

Q. When did you first come in contact with any matter concerning the Electric Vacuum Cleaner Company?

A. The latter part of April, 1935.

Q. Will you tell us the circumstances under
772 which that contact was made and what if anything you did?

A. I don't remember the dates at the present time, but on Good Friday the MESA group had called a strike at the plant. I had some members in different departments and they called at our office and they asked for victimized benefits and a Metal Polishers Unit. They asked for victimized benefits. I believe the group was out just about when Mr. Muehlhoffer was called on the line. He was out there right along and they had asked his cooperation.

Q. Who had asked his cooperation?

A. The MESA group.

Q. I see.

A. Because they had not asked him or any individual group, that is, craft organization, whether they wanted to go out on strike or not. The strike was pulled by a group out there, and he asked me to go down to the place and see the boys along with him. As I understand, they wanted some kind of advice from another labor organization. I went out there and the Headquarters was at the Black

Hawk, and I met the officers of the MESA.

Q. That is a restaurant?

A. It was a restaurant, but they had made it as a Headquarters and they were cooking meals out there and so on, and the group out there was in bad shape and we helped them out, and they asked us for a little advice
773 and if it would be possible for us for us to intercede for them with the management. We advised them to the best of our ability and from that time on we were instrumental in arranging two meetings so that their differences could be straightened out in order for our members also to go to work. Those meetings were arranged between Mr. Faulkner, the MESA Committee, Mr. Muehlhoffer, and Mr. McKinnon.

Q. Who was Mr. Faulkner?

A. Mr. Faulkner is the Department of Labor conciliator who had been assigned to this case.

Q. In 1935, he had been assigned to Cleveland?

A. Yes, sir.

Q. All right; go on.

A. I think it was about the fifth week that the strike was still on where the last meeting held with the management some way or other there was some insulting words among the officers of the MESA, and nothing could be done from then on. The group was badly disappointed and at night when I went up there they didn't have any money and nothing like that. In fact, we made a collection among our own members to help them out as best we could, get them cigarettes and something to eat and so on. The next day I was asked by some of the officers, not only myself but Mr. Muehlhoffer also, if we couldn't arrange some kind of meeting that they could sit down and trade it out, because the group was in a kind of depressing way.

Q. When you say "officers" whose officers do you mean?

774 A. MESA officers. So, on the request of the MESA Committee, Mr. Muehlhoffer and I—I believe it was the first time I met Mr. Wilson—we went up in the plant. They told the pickets to let us go in. We went in the plant and we told Mr. Wilson that the group out there

wanted to go to work, why couldn't they sit down and get things straightened out. Mr. Wilson told us at that time that the doors were open and any time they were ready to sit down and talk intelligently he would meet with any committee whatsoever. We gave this information to the group and as I understand it the same night one of the National officers called on the group and discouraged the committee from meeting anybody for arranging their differences. Then it was about a week after that that a group of men came down to Metal Trades Hall and there was not anything we could do about it. They come down and said: "Why can't you fellows help us get this thing over?"

Q. Who were these men?

A. Some members of the Electric Vacuum Cleaner Company, and I told them that as far as I could speak for my organization, Ray could speak for his own, I told him as far as I am concerned I told my organization I couldn't represent anybody or intercede for anybody unless it was in a friendly way, but if I had to take any official action they had to be members of our organization. There is no doubt Mr. Muehlhoffer could because all the members
775 in the plant belonged to his organization—that is, the Metal Polishers Division, and he could speak for his group. That day the meeting was adjourned without getting any specific understanding. The next day the committee came back again. This time there were seven or eight and they asked us if there would be any possible way, because the majority of the group were willing to affiliate with us, giving us to understand that there was at the most about one hundred and fifty good-standing members in MESA, and that most of them although they had been members some time, they had also been members of our organization, because we started an organization out there in 1933 at the beginning of the N. R. A. and they had changed their affiliations, but they had dropped from the MESA and they were free lancers at the present time, represented by this committee, and that if we were willing to take them in our organization and take care of them, they were willing to come in. We sat down with our committee and worked out the card of which some copies have

been introduced here and we ask the committee to take the cards and see what they could do with them, and we told them if they could show us that the group was willing to get in our organization we would go to bat for them. They went out, and I think it was on a Thursday afternoon they come in with one hundred and seventy-six cards. That was the result of one day on the picket line that the group had signed. We called the meeting of the one
776 hundred seventy-six. We gave them a thorough explanation of what it was all about and they were very much enthused and we had a meeting two days later on. At that meeting, we had over four hundred present.

Q. Where was that held?

A. At the Metal Trades Hall. Hall Number Two. We had about four hundred present in there. After we talked to the group, the first remark was made was: "Well, what are we going to do? Are we going to have an agreement?" We said: "Absolutely," and we suggested that the same agreement that we had with the Apex Electric Company be presented to the Electric Vacuum Cleaner Company. We didn't have a copy right there, and I sent a copy in the office which is in the third floor of the same building. I got a copy, read it to the group, and the group suggested certain changes on account of the piece work set-up at the Apex Electric, and the differential of the working conditions at the Electric Vacuum Cleaner Company, and I think those changes made to us were elected to represent the group and the various classes, they were distinctly segregated. In other words, when they signed the card, they put on the card the class of work they were doing. According to the class of work they were put under the jurisdiction of the class of work under which they come. They elected their committees of the different departments. They were told to which organization they belonged; who they were members of; and the agree-
777 ment was as approved at that meeting to be presented to the management. After that meeting, we got together with the officers of the organization, the committees, we had a conference and we took it upon ourselves instead of having large groups the suggestion was to have

one group from each organization and to get in touch with the management. We got in touch, I believe, with Mr. Wilson, and we were referred to Mr. Spieth. We went down and referred the question to Mr. Spieth and the first question was: "How do we know that you represent the majority of this group because the MESA group, they have a membership in there, and we have been talking to them, and what is all this about?" We told them that any time the management wanted, we would be ready to submit proof that we had the majority in that place. In the meantime, we thought, why not talk about the agreement, and after discussing the matter for a couple hours, finally it was agreed upon to talk upon the agreement. The management suggested a number of changes. I want to call your attention: at the same time that we had this meeting everybody was not present because the letters, the notifications sent out for the call meeting on the subject of the agreement and their affiliation was sent a little late, and committees from each group were delegated that day to send some more cards out; in fact, it was a letter for the reading and the acceptance of the agreements that were in the process of being negotiated by the committees
778 and officers of the employees of the Electric Vacuum Cleaner Company. The management suggested a number of changes in the agreement. We discussed the matter thoroughly and we also discussed the matter of what we would call a preferential shop which is a little modified system of a closed shop. And with that, as their counter-proposal from the management, we had this meeting and we told the management if there was any doubt in their mind, as I stated before, we could show them proof. We showed them proof before the meeting that we had the majority, that is, by submission of the cards, and when the meeting time came we asked the management if they wanted to come and see the group in there. I don't exactly recollect all the details, but I know this: that I read the agreement paragraph by paragraph. I mentioned the changes in there. We asked them if a motion was in order. They put a motion. We took a count, and over six hundred and forty-eight of the employees approved the agreement

and voted to go back to work.

Q. Did somebody from the management come into that meeting?

A. I believe there was, but I was busy by getting their cards straightened out, and everything else, and reading the agreement, but I believe there was the management present out there. That was after the reading, and the approval of the agreement because there was a number of speakers in there, and I can't recollect all the speakers there was. After the agreement I think it was about
779 ten speakers that said a good word or something like that to the group. From then on—again also it was decided by a motion to open up the plant on a Monday morning, which the management did, and the men went back to work.

Q. When was the plant reopened; do you know the approximate time?

A. It was the Monday after the meeting; I can't recollect the correct date.

Q. In the meantime, the agreement was signed?

A. The agreement was signed a day or two after the meeting, because the group still had a couple changes suggested, and by the time we got the management to agree on the changes it took, I think, a day or so, and then the agreement was signed.

Q. And that agreement is known as the contract of June 22, 1935, has been introduced as Board's Exhibit No. 5 here?

A. That is correct.

Q. Is that right?

A. I haven't seen the agreement, but I presume that is the one.

Q. Now, in telling us about these machinists, Mr. Gordon, you made mention of what you referred to as a preferential shop. Will you tell us what was discussed with the management on this subject and what agreements if any were reached?

A. Well, the truth of the matter is this: the
780 group was disgusted out there because they had one organization, and the MESA had come in—

Mr. Griff: Object to it as not responsive.

Trial Examiner Ringer: Read the question, please.

(Last question read by the Reporter.)

Trial Examiner Ringer: What discussions did you have with them on that?

A. The discussion on that was after the meeting. The group made a motion that they would go under the conditions of a closed shop, which conditions require that every employees become a member of the organization under the jurisdiction of which they are working. That is one thing that the management would not agree to out there, stating the fact that they had employees working at the plant for a number of years and that they would be—that it wouldn't be fair to their employees if they were required to join an organization, but they had agreed that every new employee would be told to join the respective organization after he was good enough to be employed in the plant. In other words, being given two or three weeks grace; and if his work would be satisfactory, he would be turned over so he will join the organization. That is our form of preferential shop.

Q. (By Mr. Woodle) Is that what you mean by a preferential closed shop?

A. Yes, sir.

781 Q. That agreement to the effect that former employees, that is, people who had been employed before this in your 1935 contract would not be required to join the Union, but all future employees, all people hired thereafter would be required to join the Union after a provisional period. That agreement was reached with you by the management when, Mr. Gordon?

A. That was the difference of not signing the agreement after the meeting on Thursday because the group wanted a strictly closed shop, and the management would not agree to it, and that was the dickering that we had forth and back, and finally the whole thing was that there was about sixty-seven or sixty-eight of all the employees who had not joined and we felt there was not any use of calling the plant closed until that was thrashed out. And we thought if we could not get these employees to join,

then, of course, there was not any use of having them as members anyway.

Q. You mean there were sixty-seven or sixty-eight had not joined?

A. That is correct.

Q. And it was by reason of the fact that these employees had not joined that you agreed to accept the preferential shop?

A. That is right.

Q. After this agreement of June 22, 1935, was entered into, did you following that time have continuous contacts or regular contacts with the company or with the management?

782 A. On and off, yes. Any time any grievances came up, I did. Up to about, it was about September or October of that year, and from there on, having other work to do, the plant was delegated to Mr. Milg who was another representative of our organization.

Q. That is Mr. Milg—M-i-l-g?

A. Yes, that is right.

Q. He was also Business Agent of the Machinists Union?

A. He was at that time.

Q. Later, I believe, a special representative of your Union was assigned to take charge of this shop; that is, Mr. Toth?

A. That was—

Q. Or was that more than a year later?

A. That was in July. In July, I was put in the hospital and Mr. Toth was put on my job as the representative for a period of time until I got well.

Q. That was in 1936?

A. That was in 1936, July.

Q. All right; we are getting a little ahead of the story. Now, what happened in June of 1936, Mr. Gordon, at the time of the strike? For how long a period did the June, 1935, contract continue in force?

A. How long a time?

Q. Yes.

A. Up to June, 1936.

783 Q. Up to June, 1936?

A. Yes, sir.

Q. What happened in June, 1936 when that expired?

A. The contract was renewed again and Mr. Milg was the signatory of the contract at that time because he was handling the plant, as I told you. I couldn't give you any of the details but I seen the contract after I got well and got back to the office again.

Q. When was your next contract with the Electric Vacuum Cleaner Company?

A. It was in one of our meetings that the employees called our attention that there was a lot of new employees hired that was in the latter part of 1936, that a lot of new employees were hired and they had not joined the organization yet, and something was lax. So we questioned Mr. Toth on that, and he said he was not aware of it but he would check up on the matter, and Mr. Toth and myself, and I believe, another representative called at the management and we wanted to know how many new employees were hired when the agreement was put into effect in 1936, and we find out at that time that there was over one hundred new employees hired. Over one hundred, because some old ones had quit their jobs and new ones were replaced in there, and those employees in some way or another had not signed the membership cards yet.

784 Q. Was there any arrangement between your Union and the management so that you could find out as soon as new employees were hired or was there any special arrangement?

A. No; we depended on our committees for that work.

Q. I see. What if anything did the management tell you when you called on them as you have just related?

A. Well, they admitted there was a lot of new employees hired, and we told them we would like to have the privilege to talk to these men because they had been there over the grace period. They told us it would be perfectly all right, they didn't believe there would be any objection, but they wouldn't allow three men in the plant. One man was enough to go and talk to the men. Mr. Toth got hold of these committees and went to talk to these men. These

men doubted the custom and Mr. Toth, and it was on that basis that these men were called into the office with all employees so that would be a verification of the established precedent in that plant as to the understanding that all employees had to join the Union.

Q. You mean that some of these people that were solicited by Mr. Toth doubted what he told them about being required to join the Union?

A. That is right.

Q. And that is why they were called into the shop office?

A. That is right.

Q. Were you present on any of the occasions
785 when some of the new employees were called into the shop office?

A. I believe I was, yes.

Q. And in general, what was explained to them regarding the requirements of joining the Union?

A. The agreement was explained to them and invariably the fellows would say: "Well, we are sorry; we didn't know anything about it."

Q. Were they told on any of these occasions when you were present—were they told by—strike that out. Do you know whose duty it was to inform these new employees when they were hired regarding this agreement between the Union and the company or whether it was anybody's duty?

A. The understanding was that the foreman was supposed to tell when he hired the employee that: "You are working under closed shop conditions here, and you will have to join the respective organization." If he was in the Machine Shop, he would have to join the Machinists Organization, or if he was in the Polishing Shop, he would have to join the Polishers Organization, and each foreman was supposed to tell their employees when they were hired that it was a closed shop; that is how it happened that we said some of the foreman was there. If they said: "I was not told," we faced them with the foreman and showed they were told. They were just lying; that is all.

Q. Do you recall the sit-down strike which occurred

out there and the closing of the shop which followed
786 it in March of this year?

A. Yes, sir.

Q. During the time that the shop was closed, did you have any conferences with the management?

A. During the time the shop was closed?

Q. Yes.

A. Yes, sir.

Q. About how many of those were there?

A. How many were present?

Q. How many of the conferences were there?

A. Possibly one or two.

Q. What was the subject of those conferences?

A. Well, the subject of those conferences was that they—your see, after the plant closed, we called a general meeting for the membership and again the matter was broached that if they had stuck to strictly closed shop, we wouldn't have had any trouble at all because fourteen or fifteen people out there started this rumpus and the group was disgusted for their interference and losing them, and we were definitely instructed to tell the management that the group was going to work only under strictly closed shop conditions, and most of the conferences were on that subject.

Q. On the question of having a strictly closed shop?

A. That is right.

Q. On the morning of April 3rd, you had a con-
787 ference with the management, I believe, in which it was agreed to reopen the shop?

A. Yes, sir.

Q. And following that the advertisements were placed in the newspaper?

A. Let me call your attention that that meeting was called—in fact, we arranged that conference after our meeting with the group on Thursday previous to this Saturday. That would make it about in March.

Q. That meeting was called as a result of a meeting of your organization? That is, an American Federation of Labor meeting?

A. A general called meeting of the Federation of Labor

group for the opening of the plant.

Q. Handing you this letter marked Board's Exhibit 26, is that the letter that was sent out requesting the meeting you have been telling us about, or was there another meeting besides that?

A. That was our—that is another meeting besides this one. I remember this. This is the day we start giving them clearance. We start giving them clearance cards to go to work.

Q. That letter is dated March 31st?

A. That is right.

Q. Following that letter—

A. Following that letter, we had the meeting.

788 That date is not clear in my mind.

Q. How many persons attended that meeting of the Federation?

A. I can't give you the exact amount of the persons, but I can tell you that we have issued—you see, at that meeting they decided to go back to work, and we issued over six hundred and seventy clearance cards, and we started issuing the clearance cards from that Friday.

Q. You want us to understand that you issued six hundred and seventy cards at that meeting?

A. Yes, sir.

Q. What date was that?

A. April 2nd.

Q. There has been a great deal said, Mr. Gordon, about the matter of clearance cards. Was this clearance card idea something that was unique from the Electric Vacuum Cleaner Company situation, or has it been used elsewhere?

A. It has been used elsewhere, but the reason we done that is on account of statements that appeared in the papers under the signatures of the United Automobile Workers and Electrical Workers Unions, by them stating that they were going to have a lot of men from Canton and Akron and lumber workers from Akron and Fisher Body men, that they were not going to let the men open the plant; that they were going to have their heads busted if they were trying to go to work.

Mr. Carey: I object. The statements were pro-

789 duced in the paper.

Trial Examiner Ringer: Yes; Let that last sentence go out.

A. Well, we felt that we have to protect our employees.

Mr. Carey: I object. Let him put the question.

Trial Examiner Ringer: Overruled.

A. And for them to have some kind of identification, we issued them a white button so they would be recognized when they were to work that Monday morning.

Q. On the morning of April 3rd, when you had that meeting at Mr. Spieth's office, was the question of clearance cards discussed there?

A. That was directly Union business.

Q. Did you talk about that at all?

A. Maybe we did, but that was purely our business. We are working under a contract out there, we don't ask permission about our Union business from officials of the company.

Q. That is not what I asked you, whether you had permission. I just wondered whether it was discussed at that meeting?

A. I don't know whether it was or not. I don't recollect.

Q. What arrangements were made to provide other employees who had not already secured them, with these clearance cards on the day the plant opened?

A. A number of employees came in and received those cards. In fact, some employees got as many as five or

790 six cards on Saturday and Sunday, because we were in the Hall each day previous to the opening of the plant.

Q. On the day the plant opened, what provisions did you make for giving out cards?

A. After the meeting with the management on Saturday, we had also a meeting at the Hall, Metal Trades Hall; I believe those cards were discussed with the management because as a result we were pointed out that a lot of these people would possibly come at the plant gates Monday morning to go to work and if they had to have clearance cards, what arrangements we will have to make, so Saturday afternoon I made arrangements with the landlord of

the house across the street in order for him to permit us the use of the lobby, and we set the table out there and various slips of the organizations and clearance cards and a committee delegated to handle that work Monday morning until all the men got back to work.

Q. What instruction were issued to these men delegated to handle the work as to who was entitled to receive a card?

A. All the employees were entitled to receive a card.

Q. All the employees of the Electric Vacuum Cleaner Company who applied for cards were to receive them?

A. There was no specific instructions given. All the employees were supposed to receive their cards to go to work.

Q. Some time after the plant reopened, I believe negotiations were begun for a new contract for 1937.

791 Did you take part in those negotiations?

A. Well, that was the result also of the meeting, of the previous meeting to the last one we had with the management.

Q. That is the meeting you have been just telling us about a little while ago?

A. Well, we had a previous meeting with the management. That was in the middle of the week, if I recollect right.

Q. Middle of what week?

A. Oh, April 3rd. And at that meeting we asked the management that the group wanted a strictly closed shop, and after them discussing the matter a while, it was agreed to let the matter lay for a while until after we got under operations and then we could go to work and get the closed shop through as to wishes of the body.

Q. And did you later get together with the management on this subject?

A. I beg your pardon?

Q. And did you later get together with the management on this subject?

A. Yes, we did.

Q. About when?

A. (No answer.)

Q. About how long after the plant reopened?

A. Well, it was on the week of May 15th, ending May 15th.

Q. At that time, what took place?

792 A. Well, they had meetings—that is, the employees I represent in that plant, their meetings are the first Friday—I beg your pardon—the second Friday and the first Saturday of each month. At the meeting of my group, the agreement was discussed and we prepared a strictly closed shop agreement. We have some of them in effect at the present time in another plant. One of those were used as a copy and I received authority from my group to present such an agreement to the management which on the following Monday—that would be on the 17th—we discussed the agreement at the Metal Trades Business Agents Meeting, and each organization had done likewise, and that agreement was presented to the management for their acceptance.

Q. And what did they do about it?

A. Well, again there was a question whether it would be to the advantage of all of the group, whether everybody would be satisfied with that, and I believe I am the one that told the management that it would show the management that everybody would be willing to go along with an agreement like that, employed at the Electric Vacuum Cleaner Company, or at least the majority, and with the understanding that if the majority proves such, then we will sign an agreement.

Q. That is, there was some discussion between yourself or other Union men and the management regarding whether you represented the majority?

793 A. That was all the representatives of the Union.

Q. And what if anything did you say to the management about representing the majority?

A. Well, we called a meeting.

Q. What did you tell the management about representing the majority?

A. We told them we had the cards and the proof, and everybody in that plant has the book in his pocket at the present time, and that is the proof that we represent the

majority.

Q. Then you said you called a meeting?

A. Yes, sir.

Q. Of all the employees?

A. Yes, sir.

Q. How was the notice of that meeting circulated?

A. The notice was made down the Hall and each representative signed the notice, and took it down to the plant, and the members were notified that there would be meetings called starting at two o'clock for the night shift, because there was a night shift in there.

Q. Was the notice of that meeting posted on the bulletin board?

A. Yes; we have been posting all our notices on the bulletin board right along.

Q. At the bulletin board—I mean at the plant?

794 A. Yes.

Q. What was the date of this meeting you were talking about now?

A. May 19th or 20th. I believe it was the 19th or the 20th. That is the day that the agreement was approved.

Q. Where was this meeting to be held?

A. In the Slovenian National Hall. On Holmes Avenue.

Q. Is that in the vicinity of the plant?

A. That is on Holmes Avenue; that is about possibly three-quarters of a mile from the plant.

Q. What took place at that Hall, Mr. Gordon?

A. Well, the first meeting—that was the night shift—they started coming in about a quarter to two. We start the meeting at two o'clock. The committee made the report on certain negotiations because previous to that day, our general committee and the representatives—I was not present then, because I had another grievance to take care of—Mr. Toth was present and the representatives met with the management and the agreement was discussed again with the group, that is, the case of the employees and other matters were discussed, of increases and so on. That is in fact, it has been hanging fire for quite a while. Then the committee of the night shift, two committee men, got up

and made a report on that. And after they made the report, I asked the group if they wished me to read that
795 agreement. They said yes. I read the agreement article by article and I asked them for their questions. They questioned it. I explained every paragraph of it, and after that I asked that a motion was in order, and by a motion the agreement was adopted by the night shift unanimously, and having had a little trouble, like I mentioned previously, that some of the newer employees claimed they didn't know about an agreement, it was suggested by some of the old-time committee men in the plant to have the agreement for everybody in the plant, so we had the agreement printed so everybody would have a copy, and we gave each member a copy that was present out there. We asked them to sign one copy giving us the copy that was signed, leaving it on the way out to their work, and to take one copy along with them to have it for the record.

Q. You said that was the meeting of the night shifts?

A. Yes, sir.

Q. There were other meetings that same day?

A. Yes, sir; the Polishers met at three-thirty, so we had a middle meeting between the two meetings of the polishers, that being a unit by themselves, the night shift, being mostly machinists.

Q. Did the same procedure take place?

A. Exactly.

Q. Same thing was done?

A. Yes, sir.

736 Q. The contracts were read and approved?

A. Yes, sir.

Q. And were signed at that meeting?

A. Absolutely.

Q. These contracts—I am handing you Board's Exhibit No. 1 in which is included the Respondent's answer to the amended complaint. Attached to that answer is what is marked Exhibit A. Is that a copy of the contract that was signed at that meeting?

A. Yes, sir; that is exact copy. They were all made in duplicate, like this.

Q. What was done after those contracts were signed, Mr. Gordon?

A. Well, on the day shift, being a large group, the Hall was entirely packed. The meeting lasted a little longer than we expected, but after the contracts were signed, Mr. Rinehart and myself came downtown.

Q. And saw some one downtown?

A. I beg your pardon?

Q. You saw some one down town?

A. If we saw some one down town?

Q. Yes.

A. The rest of the officials. Mr. Toth mentioned he saw some one at the night shift out there and we saw some of the officials. They weren't present at that meeting.

797 They had something else to do.

Q. And you notified the management in view of the fact that these agreements had been signed?

A. Yes, sir; we told them the number of agreements we had and we told them we were ready to sign the agreement, and they said if that was the result, they were ready; and we showed them the copy out there.

Q. Can you tell us how many agreements were signed that day by the employees of the Electric Vacuum Cleaner Company at the Hall?

A. Before we left the Hall, we counted the agreements, Mr. Rinehart and I. That is, the day shift agreements. We had seven hundred and twenty-eight agreements right at the Hall on the table.

Q. Seven hundred and twenty-eight on the day shift?

A. Yes, sir.

Q. Do you know how many night shift agreements were signed that day?

A. When we came down town, the total count, I believe, was nine hundred and something.

Q. How much?

A. Over nine hundred.

Q. You mean altogether?

A. Yes; altogether.

Q. And following that, the company signed the

8 contract which has been introduced as Board's Ex-

hibit No. 9 and 10. That is the contract of May 20, 1937?

A. That was the master agreement, yes.

Q. I believe you stated before that one of the purposes of having a separate agreement printed for each member to sign, was the fact that you had previously had some difficulties with the complaints from the members that they had not known about your agreement with the company?

A. Not only that, but they wanted to know the full details how grievances should be handled and everything else, which it stipulates in the agreement all that.

Q. So that these agreements that were signed by the employees were made up in duplicate, and one copy was retained by each employee for his own use; is that it?

A. That is right.

Q. Have some agreements been signed since the meeting at that Hall, Mr. Gordon?

A. Oh, yes.

Q. Some of the employees have signed similar contracts or copies of the contract at the plant?

A. Each new employee when he is employed has to sign a contract. In other words, we give him the contract, he reads it, and if he approves of it, he signs it. A group of men not present at that meeting came around at various Union meetings, came around and asked us for copies
799 of the agreement and signed it. Later on, some agreements were signed that were maybe switched around the lines, I don't know what happened to them, but you will see maybe some of those agreements marked duplicate.

Mr. Woodle: That is all.

Mr. Orgill: May I ask a question, your Honor.

Trial Examiner Ringer: You may.

Direct Examination

Q. (By Mr. Orgill) After you had met with the company officials, and with your special committee for collective bargaining a tentative form of agreement was arrived at, and that as I understand it, you had printed and took out to the meeting of the employees so that you might read it to them, explain it to them, and have them fully under-

stand what the agreement was; is that correct?

A. Most of the employees knew of the agreement because it had been already discussed at our Union meetings previously to having it printed.

Q. But at that time you went out there and fully explained all of the terms and provisions and conditions of it?

A. Yes, sir.

Q. Had you had the agreement printed in duplicate?

A. Yes, sir.

Q. And those instruments were identical in form?

A. They were.

800 Q. And the last paragraph of that instrument read as follows, if I read it correctly: "I, the undersigned, having read the above agreement hereby approve the making of the same by the Unions and during the term covered by said agreement, and by any renewal thereof while I am in the employ of the Electric Vacuum Cleaner Company, Inc., I irrevocably designate the Unions as my exclusive bargaining agent and agree to abide by all the terms and conditions of said agreement"; is that correct?

A. That is right.

Q. And it was that instrument that you had the individuals sign?

A. That is right.

Mr. Orgill: That is all.

Trial Examiner Ringer: Proceed.

Cross-examination

Q. (By Mr. Carey) Mr. Gordon, you testified that in 1933, your organization made an effort to organize the machinists in the Electric Vacuum Cleaner Company?

A. We had some members.

Q. How many members?

A. I was not a representative yet at that time. I was working at the Addressograph Multigraph Company, and I couldn't give you the definite figures.

801 Q. You testified that in April, 1935, you were an officer of the machinists?

A. Yes; I was elected in March.

Q. Did you have at that time an agreement with the Electric Vacuum Cleaner Company?

A. No, sir.

Q. The first agreement you had with the Electric Vacuum Cleaner Company was after the M. E. S. A. strike?

A. That was in June, 1935.

Q. You testified during the M. E. S. A. strike, you were called upon for assistance?

A. That is right.

Q. Who called upon you for assistance?

A. Certain officers of the M. E. S. A.

Q. Do you know the names of those officers?

A. Some of them.

Q. Would you tell us the names of the officers?

A. Well, I don't want to put those people on the spot by calling their names, because there has been a lot of reprisal against them so far.

Mr. Woodle: While I have no particular grounds for objecting to the question, I think perhaps it might be embarrassing to these people if their names were mentioned.

Trial Examiner Ringer: I will sustain the objection. I think that is fair. We followed that theory throughout this case, and I will do it the same for everybody.

802 Mr. Lodish: May I ask one question?

Trial Examiner Ringer: Yes.

Mr. Lodish: Are there any of those whose names you think you can mention because they are completely out of the picture, because if they are you might do that.

The Witness: No, they are not.

Mr. Lodish: All right.

Q. (By Mr. Carey) Are any of these men who called upon you for assistance now employed by the Electric Vacuum Cleaner Company?

A. They are.

Q. What was the purpose of calling upon you for assistance?

A. I believe I previously mentioned that we had some members in it, and our members were sympathetic for the strike. Nevertheless, they were not going to stay out there

all the time and the purpose of calling on us was if we could suggest some way of bringing the two groups together, by possibly using a little influence here and there to straighten out the strike and also financial assistance.

Q. What assistance did you render them?

A. Well, I won't give you the figures of it, but I did.

Q. On the basis other than financial?

A. The best actual things, I think I mentioned previously what I did.

803 Q. Was it through your efforts and other representatives of the American Federation of Labor that a meeting was arranged between the management and the M. E. S. A. Union?

A. A couple such meetings were arranged.

Q. Was there any meeting up until you interceded, arranged between the management and the M. E. S. A.?

A. Yes; and they had come to a deadlock.

Q. Wasn't Mr. Faulkner active at that time?

A. Yes, sir.

Q. The Department of Labor Conciliator?

A. Yes, sir.

Q. Did his efforts fail in breaking that deadlock?

A. No. They didn't fail, but we suggested to Mr. Faulkner to call another meeting to try to possibly bring the groups together.

Q. I can't see why the M. E. S. A. officers could not call upon Mr. Faulkner to call another meeting if his efforts did not fail in breaking a deadlock. Can you enlighten us on that?

A. I think I previously mentioned that they had the right to call upon him, but I think I mentioned that some way or another there may be a break between the two parties to reach an agreement. I know through my experience in the labor movement, oftentimes we come to such a deadlock and another party may suggest another extra meeting, and when that extra meeting takes place, all the trouble is ironed out and people feel in a different mood altogether.

804 Q. You testified that during the fifth week of the strike, insulting words were exchanged between the

management and M. E. S. A. officers; is that true?

A. I heard things to that effect, yes.

Q. You did not attend that conference?

A. No, I didn't.

Q. Were you advised what caused those insulting words?

A. I couldn't tell you that.

Q. You testified that some of the employees were members of the International Association of Machinists in 1933, and some remained members of the International Association of Machinists. Did any drop membership in that organization?

A. Some were automatically dropped, but we have our oldest member in the City of Cleveland still works at the Electric Vacuum Cleaner Company. Worked there for a number of years, has been a member for forty-nine years of our organization.

Q. The dues book in your organization would show if they were a member of the International Association of Machinists in 1933 and dropped membership?

A. Well, we dropped them.

Q. Did any of those members to the best of your knowledge become members of the M. E. S. A.?

A. I don't know that. It was previously to my time.

Q. Would it be possible for them to?

A. There is a possibility.

805 Q. Then there is also a possibility that they again became members of the International Association of Machinists?

A. Then they would be reinstated?

Q. Then they would be reinstated?

A. Yes, sir.

Q. Then, as another organization came into existence, like the United Electrical and Radio Workers of America, it would be possible for them to drop membership in the International Association of Machinists and become a member of the United Electrical and Radio Workers of America?

A. You may bear this in mind, that as long as they are in good standing, they can't drop membership, and if a

member is in good standing and in my organization and joins a dual organization he is apt to expulsion or fine.

Q. The question was: would it be possible for them to drop membership in the International Association of Machinists? Could they then join the United Electrical and Radio Workers of America?

A. They might if they had notified us that they had dropped membership, but nobody has done it so far.

Q. Is it a rule in your organization that if they join an organization like the United Electrical and Radio Workers of America that they are automatically dropped from the membership of the International Association of Machinists?

A. No, sir.

806 Q. Is the United Electrical and Radio Workers of America a dual organization?

A. Yes, sir.

Q. And yet if they join it they could still maintain membership in your International Association of Machinists?

A. No; we expel them.

Q. Not suspend them?

A. We might fine or suspend them or expel them.

Q. Until you do expel them, are they members of the International Association of Machinists?

A. How is that question again?

Q. Until you do expel them—

A. Yes.

Q. —are they members of the International Association of Machinists?

A. Yes.

Q. Even though they are members of the United Electrical and Radio Workers of America, what you call a dual union?

A. Yes, sir. And they have their right to appeal to the International office about the action taken of the Local.

Q. You testified that in a conference with the management during the M. E. S. A. strike, that Mr. Wilson stated: "The door is open to any committee"; is that true?

A. He meant the M. E. S. A. committee. That is the only committee he was talking to, and the Polishers com-

mittee.

807 Q. At the meeting with Mr. Spieth, what was the conversation that took place in regard to the MESA Union?

A. Meeting with Mr. Spieth?

Q. Yes. To refresh your memory, you testified that the MESA has membership in there?

A. Yes.

Q. Is that a statement by Mr. Spieth?

A. Well, they wanted to know the differential. They told us that the MESA had membership in there according to the statements of the MESA officials.

Q. You testified that you would protect your members. This is in reference to the opening of the plant, April 5th?

A. Yes, sir.

Q. What form of protection took place at that time?

A. Well, we had a lot of our officers and members in the picket line to protect our members.

Q. Other than workers of the Electric Vacuum Cleaner Company?

A. I couldn't say that. Possibly there were.

Q. When a man received a clearance card did they strike his name off the list?

A. What list? The payroll list?

Q. To explain the purpose of the question, a man might go to one of the officers you stated—say, to Metal Trades office, and receive a clearance card, and then the following day he might go to a different arrangement

808 you had made and receive another clearance card. In order to keep a man from receiving several clearance cards, what provisions were made? Do you have a list of the names?

A. There was only one place where each individual could secure a card. Up to twelve o'clock in the morning, Mr. Toth would be on the line, and then he would be released by another official and somebody else would come to town. But we had our membership records in there, and we knew whom we were sending to work.

Q. Did the agreement in 1935 exclude any other union

cept the five American Federation of Labor Unions?

A. The preferential closed shop does exclude any other ion.

Q. This was in 1935?

A. Yes, sir.

Q. Were the workers, the old employees, given an op-rtunity to join any Union of their own choosing?

A. They joined the American Federation of Labor of ir own opinion and their own choosing because nobody nt after them and told them to do so.

Q. You stated in your testimony that any other Union t the five American Federation of Labor Unions were cluded because of the preferential closed shop. Now, w could the group or employees join some other union in t closed shop?

A. By resigning from the American Federation of Labor, according to their signatures when the con-tract is signed, and going and joining any one he wants.

Q. Then it would be satisfactory for any of the old ployees to join whatever union they desire regardless its affiliation?

A. Put that question again.

Trial Examiner Ringer: Read it, please.

(Last question read by the Reporter.)

Mr. Woodle: I don't think the question is clear. Sat-actory to whom?

Trial Examiner Ringer: You had better add that to ur question.

Q. (By Mr. Carey) Satisfactory to themselves.

Mr. Woodle: I object to that question.

Q. (By Mr. Carey) In other words, could a worker un-the preferential closed shop agreement, an old em-yee, join the C. I. O. Union?

A. At the time we signed the closed shop or the pref-ntial shop agreement, there were no C. I. O. Unions in stence, and possibly if there were, we would have signed ifferent contract.

Q. Now that there is a C. I. O. Union in existence, it uld be possible that those workers would join the C.

I. O.?

Trial Examiner Ringer: I am going to sustain that on my own motion because that is going too far. What would have been the situation if certain facts had existed at that time.

810 Mr. Carey: For the purpose of the record, you said, Mr. Examiner, that you are going to sustain that on your own motion. You mean you will object?

Mr. Woodle: I was about to object.

Mr. Carey: For the purpose of the record, you said: "I am going to sustain that on my own motion."

Trial Examiner Ringer: I am going to instruct the witness not to answer.

Q. (By Mr. Carey) To the best of your knowledge how many new employees were hired in the Electric Vacuum Cleaner Company since the preferential union shop was agreed upon?

A. Over one hundred and thirty.

Q. Would that represent a majority of the employees of the Electric Vacuum Cleaner Company?

Mr. Spieth: I object. It is very evident it wouldn't represent a majority, with a plant that has, on the answer and pleadings in here, employees from eight hundred to a thousand.

Trial Examiner Ringer: That is a mere matter of computation, I think. Sustain the objection.

Q. (By Mr. Carey) Mr. Gordon, you stated that the MESA officers went to the Metal Trades Department of the American Federation of Labor to have them intercede for them?

A. What was that again?

Q. I wanted to know if they went to your or-

811 ganization or to the Metal Trades for assistance?

A. I believe I didn't make such a statement. That statement I made was that the committee of the employees came down to the Metal Trades to see us.

Q. Were the Metal Trades cooperating with the MESA in that strike?

A. If they were cooperating with the MESA?

Q. Were they cooperating?

A. I don't know definitely on that.

Q. Do you know if the Metal Polishers were on strike that time?

A. They were not.

Q. Did they proceed through the picket line of the ESA?

Mr. Spieth: I object; I don't see that that has any aring.

Trial Examiner Ringer: Sustain the objection.

Q. (By Mr. Carey) Did the metal polishers work dur- g the MESA strike?

Mr. Spieth: I object.

Mr. Carey: Mr. Examiner, there seems to be some dif- rence of opinion in regard to cooperation. We are at- mpting to prove that there was not the degree of co- eration that the witness testifies to. It appears from r knowledge of what happened at that time that the etal Trades did not cooperate with the MESA while on rike. The witness testified that they were sympathetic to the MESA on strike.

Trial Examiner Ringer: It is pretty remote. I will permit it to be answered though. Overrule the jection.

A. Well, the fact of the matter is that they stayed t. They didn't go to work.

Q. (By Mr. Carey) Was there any agreement between e Metal Trades, the American Federation of Labor, d the Electric Vacuum Cleaner Company to break the ESA strike?

A. Any agreement?

Q. That is right.

A. A labor movement don't make such agreements.

Q. Answer the question.

A. I answered the question.

Trial Examiner Ringer: That is already answered.

Q. (By Mr. Carey) Mr. Gordon, did the International sociation pay victimized benefits?

Mr. Woodle: Object to the question.

Trial Examiner Ringer: Overruled. He testified to t.

A. They do.

Q. (By Mr. Carey) Did they pay victimized benefits at the time of the MESA strike in 1935?

Mr. Woodle: Objection.

Trial Examiner Ringer: Overruled.

A. I won't answer that question because this is not the MESA and International Association of Machinists controversy. If we did anything at that time, if the
813 MESA officers want to know, they will know about it. I won't divulge any matters of our organization. That is up to Executive Council.

Trial Examiner Ringer: You prefer not to?

The Witness: Yes, sir.

Trial Examiner Ringer: You won't be required to.

Q. (By Mr. Carey) Is it a requirement of your organization that contracts negotiated by the Local Union for the International Association of Machinists be approved by the Grand Lodge?

Mr. Spieth: I think that is open to the same objection.

Trial Examiner Ringer: I didn't get the question. Read it, please.

(Last question read by the Reporter.)

Mr. Spieth: There is no question but what this is a binding agreement.

Trial Examiner Ringer: Sustain the objection. I don't see how that will help us in any way.

Mr. Carey: Mr. Examiner, the purpose of the question is to determine whether or not it is a bargaining agreement with the organization. We have an agreement that is unusual, it is unique in its form, and the procedure in which this agreement was negotiated and put into effect. We believe that the agreement's purpose was to circumvent the Wagner Law, not to give the workers a right of free
814 choice of representatives. If that agreement is not an agreement between the International Association of Machinists and the Electric Vacuum Cleaner Company, it is not an agreement of collective bargaining, in our opinion.

Trial Examiner Ringer: Well, that would be a legal

question arising out of the facts. I will sustain the objection.

Mr. Carey: That is all.

Trial Examiner Ringer: Any other questions?

Mr. Woodle: Just one other question.

Redirect Examination

Q. (By Mr. Woodle) Did you at any time between March 19th and April 5th or during the week of April 5th receive any notice from any members of your organization that they had resigned?

A. No, sir.

Q. Any notice from any member of your organization that he had resigned?

A. No, sir.

Q. None at all.

A. No, sir.

Q. If such notices had been sent to the organization, would they have come to your attention?

A. Yes, sir.

Mr. Woodle: That is all.

Mr. Carey: May I ask a question?

Trial Examiner Ringer: Yes. Go ahead.

Recross-examination

Q. (By Mr. Carey) Is it necessary for members of your organization to give notice to your Union or do you suspend them?

Mr. Orgill: We object.

Trial Examiner Ringer: You are objecting?

Mr. Orgill: Yes, surely.

Trial Examiner Ringer: Limiting the question to the practice, I will overrule the objection. Answer what your practice is.

A. It all depends on the type of plant or contracts under which the men are employed or working. If they work in a closed shop, they would have to be members of the organization. They have to stay members of the organization; otherwise, they would jeopardize their job. In other words, if they drop membership, they would just lose their

job. That has been the practice for years now, and that is the practice in closed shop.

Q. What is the practice when it is not a closed shop?

A. When it is not a closed shop?

Q. Yes.

A. It all depends on what arrangement this individual member has made with his organization when he joins.

Q. Don't you have rules that you go by to establish uniform procedure of membership?

816 A. In certain cases, we put stricter rules on the membership. That all depends on the Local. Whatever the Local wants to do.

Q. Did any of the employees that were in your organization in 1933 resign from membership?

Mr. Spieth: I object to 1933.

Mr. Woodle: I think that is a collateral issue, Mr. Examiner.

Trial Examiner Ringer: Sustain the objection.

Mr. Carey: Mr. Examiner, it appears that the counsel is attempting to show the procedure of the International Association of Machinists is to resign from membership.

Mr. Woodle: I didn't attempt to present any procedure.

Mr. Carey: The question that the counsel asked was: Did you as Business Agent receive any notice of resignation from the International Association of Machinists? In order to clarify that to show that no resignation is necessary in the International Association of Machinists is the reason why I asked the question.

Trial Examiner Ringer: I think that has been covered sufficiently. I will sustain the objection.

Mr. Carey: That is all.

Trial Examiner Ringer: I would like to question you briefly.

The Witness: Yes, sir.

817 Examination by Trial Examiner Ringer

Q. (By Trial Examiner Ringer) As I understand it now, under the contracts between the Local Unions of the American Federation of Labor and the respondent com-

pany, under the first two years, there was not any effort made to enforce Union membership on the old members of the company; is that right? I say to enforce it now. Of course, if you could get anyone to join, that was all right, but you didn't attempt to enforce any requirement of union membership; did you?

A. No, sir.

Q. Did you make any effort during those first two years—I am referring now up until March, 1937—did you attempt to enforce the requirement of Union membership on the new members?

A. Yes, sir.

Q. Did you take any steps with respect to any who had not joined or had refused to join?

A. Mr. Examiner, we don't like to make a man lose his job because he doesn't want to join the Union.

Q. You answer is: "No" then, that you don't take any steps to enforce—

A. We did take steps in different ways. That is, we talked to the men and we convinced them to join and most of them did.

Q. But you didn't request the company to discharge any of those who did not join?

A. I haven't; maybe another representative did.

818 Q. So far as you know, nobody did?

A. I don't know that, but I haven't. I haven't asked the management at any time to discharge any non-members—or any new employees, in fact—for not joining.

Q. You were in charge of any of the employees of that Union during most of that time; weren't you?

A. No; I was not. In the period from the latter part of 1935, up to October, 1936, somebody else was in charge of the plant.

Q. When the strike came on in March, 1935, did you attempt at that time to change your policy in these respects in any way with respect to enforcing whatever agreement you had, either verbal or written?

A. Well, the only thing I done, when the whole department objected to working with one man who did not belong to the organization, said, "We will quit work unless

he joins," then I had to notify the management or notify the employee, "You are going to cause trouble in this department; the men don't want to work with you." That is the only thing I could do under the circumstances.

Q. So, as I get it then, when you worked out your agreement shortly after March, 1937, you changed the plan to complete closed shop?

A. We changed the plan because the membership required us to do so.

819 Q. What I want to find out is whether or not by your discussion or agreement with the company made it a requirement of Union membership for the old employees?

A. No; we haven't done that. That is on the opening of the plant. We didn't do that.

Q. You didn't do that when you opened the plant?

A. No, sir.

Q. There was not any agreement to that effect?

A. No, sir.

Q. Was there an agreement at that time between your Union and the company that they would begin to enforce it as against new employees?

A. The thing was that all the new employees, and it has been agreed upon, should become members of the organization.

Q. That had been your agreement all the time; hadn't it?

A. That is right.

Q. What was the difference now, after the plant opened again? Was that then to be strictly enforced, whereas it had not been strictly enforced in the past?

A. Might I explain, we had to be more strict on the enforcement of that clause.

Q. As a matter of fact, there was some little dispute about the company and your people not having enforced that strictly up to that time; isn't that correct?

A. I don't recollect of any dispute, because I was

820 not any party.

Q. The discussion of it?

A. I don't believe there was any discussion, but the

thing was that some of our committees were called down for not being careful.

Q. Under the new contract, that was later made in 1937, the one you referred to as the master, being signed on May 20th, I believe, was there a separate verbal agreement in connection with it, that it shouldn't apply to the old employees?

A. Well, all the old employees joined the organization because they didn't want any further interference, so there was no need of any such understanding. Everybody there now is a member of his own organization.

Q. There were certain ones who had not signed it, were there not, of the old employees, some of those who are no longer with the company?

A. No; there was not anybody that was not with the company.

Q. So at the present time now, under this agreement, you and the company are attempting to enforce it against old employees and new employees and against everybody?

A. No; I want to make one point clear. Now, here is a department that everybody in that department belongs to one craft organization. There is one individual out there that actually doesn't want to join. Now, the employees are not going to tolerate working with him, and when
821 they don't want to work with him, for the sake of not having any trouble in that department, this party was asked whether he would play ball with the rest of the men or quit his job. That is the thing that we have been doing. Not only in there—in fact, I haven't asked anybody in there yet—but that is a trouble we have had in a lot of the plants, where one or two individuals will create a lot of trouble.

Q. Are there employees in the Respondent's plant at the present time who are not members of an American Federation of Labor Union, if you know?

A. Not to my knowledge. In my departments I believe they all belong.

Q. You think every employee, at least after he has got over the two or three weeks probationary period, has joined?

A. Yes, sir.

Trial Examiner Ringer: That is all.

Mr. Lodish: Just one or two questions.

Cross-examination

Q. (By Mr. Lodish) You are in the same craft as Mr. Toth?

A. I beg your pardon?

Q. You are in the same craft as Mr. Toth?

A. Yes, sir.

Q. Now, I wonder, Mr. Gordon, if you can give us a better explanation of the departments you represent than Mr. Toth did? I was a bit confused about his testi-
822 mony—the difference between the one hundred and twenty-five and the three hundred. Can you tell us what departments in the plant are eligible to your Union?

A. All the departments that come under the jurisdiction of the International Association of Machinists, according to the jurisdiction granted by the American Federation of Labor.

Q. What departments are those in the Electric Vacuum Cleaner Company plant?

A. That is the Machine Shop, Ball Bearing Department, Grinding Department, Tool and Maintenance.

Q. That is five?

A. Yes, sir. Let me make one thing clear. There is some inspectors out there in the Inspection Department that inspect the work in the Machine Shop, but they might be under an Inspection Department.

Q. And are they eligible?

A. They are machinists. They couldn't inspect a machine piece unless they knew what it was all about.

Q. So you are including part of the Inspection Department as well?

A. Anybody working at the machinist trade.

Q. Those departments you mentioned—ball bearing and so forth, all the employees in those departments are eligible to your Union?

A. Yes, sir.

823 Mr. Lodish: That is all.

Trial Examiner Ringer: Brief recess at this time.
(Recess.)

Trial Examiner Ringer: I suggest if you have a number of witnesses out there to have them step in and all be sworn and all but the one testifying step out again. That will save considerable time in swearing all these witnesses.

(At this point ten witnesses were brought into the court room and sworn.)

Trial Examiner Ringer: All right. All of you except the ones that are called will have to go out in the hall again.

Mr. Woodle: Mr. Fox take the witness stand, please.

JOHN FOX, called as a witness for the American Federation of Labor, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Woodle) Your name is John Fox?
A. John Fox.
Q. Your address is 16508 Euclid?
A. Yes, sir.
Q. You are employed at the Electric Vacuum Cleaner Company?
A. Yes, sir.
Q. For how long have you been employed there?
A. About from 1918.
Q. About nineteen years?
A. About something like that, approximately 1918.

824 Q. What is your work out there?
A. I am Assistant Foreman of the Polishing Department.
Q. How long have you held that position?
A. In the neighborhood of about eight years I should judge.
Q. Before that time what was your work?
A. I worked on the wheel, the same as the other men.
Q. In the Polishing Department?
A. Yes, sir.

Q. Are you a member of the Polishers' Union?

A. Yes, sir.

Q. How long have you been a member?

A. I joined the Metal Polishers I think—I am not positively sure—in 1898.

Q. Have you been a member since 1898?

A. Absolutely.

Q. Then you were a member of the Polishers' Union when you first started to work at the Electric Vacuum Cleaner Company?

A. Yes, sir.

Q. Were there other members of the Polishers' Union at that time?

A. Practically all members at that time belonged to the Polishers Local No. 3 in that department.

Q. That is, all employees of the Polishing Department?

A. Yes, sir.

Q. Do all employees of the Polishing Department
825 now belong to the Polishers' Union?

A. Absolutely.

Q. How long has that situation existed?

A. I judge that existed since 1934, since the latter part of 1934.

Q. Since the latter part of 1934 then every employee in that department has been a member of the Polishers' Union?

A. Yes, sir.

Q. In your work out there, Mr. Fox, has your attention been called to any arrangement in the balance of the shop regarding Union membership?

A. Well, just as I hear throughout that all employees in the shop are supposed to belong to the American Federation of Labor. That is all I know.

Q. How long ago did you hear that?

A. Well, I heard it quite often in 1935 and 1936.

Q. Was the question of Union membership in the rest of the shop a question that was occasionally or frequently discussed among the employees out there?

A. Yes, it was.

Q. Do you know, Mr. Fox, whether or not there was in

1935 and 1936 a strictly closed shop; that is, that all members belonged?

A. All members belonged, had to belong.

Trial Examiner Ringer: You mean in your department?

826 The Witness: Yes, sir.

Mr. Woodle: That is all.

Trial Examiner Ringer: Cross-examination.

Cross-examination.

Q. (By Mr. Carey) Mr. Fox, did you ever see the agreement that gave the Metal Polishers a closed shop?

A. No; I have not.

Q. Was there any such agreement?

A. All I know is just a verbal agreement, as far as I know. I never seen a written agreement. I have been too busy otherwise.

Q. Did you know that some of the polishers had attempted to join the C. I. O. Union?

A. I didn't at no time as I know of—that is, while in the employ, during the time before the trouble. That is all I know. I don't know anything about the polishers. I have never went in any further than to know that they all had to belong to the American Federation of Labor to work in that Polishing Department.

Mr. Carey: No further questions.

Trial Examiner Ringer: Just a moment.

Examination by Trial Examiner Ringer.

Q. (By Trial Examiner Ringer) Were you a polisher before you became an Assistant Foreman?

A. Yes; I have been a polisher for in the neigh-

827 borhood of forty-eight years.

Q. Now, in that department since 1918, do you know of your own knowledge whether the salary has been considerably higher than in the other parts of the plant?

A. Absolutely. The polisher always have a fixed rate in practically pretty much all the places they were working, especially where there is all union men.

Trial Examiner Ringer: That is all. Next witness.

Testimony of Leonard Trask

LEONARD TRASK, called as a witness for the American Federation of Labor, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Woodle) Your name is Leonard Trask, T-r-a-s-k?

A. That is right.

Q. And your address is 1063 East 125th Street?

A. That is right.

Q. You are now employed at the Electric Vacuum Cleaner Company?

A. I am.

Q. In what department?

A. Polishing Department.

Q. For how long have you been employed there?

A. Since 1929.

Q. What is your work there?

A. As a polisher, buffing.

828 Q. Are you a member of the Polishers' Union?

A. I am.

Q. Do you know whether or not all of the employees in your department are members of the Union?

A. They are.

Q. Do you know how long that situation has existed?

A. Since 1935,—'34, '34.

Q. Which is it?

A. 1934.

Q. 1934?

A. Yes.

Q. Did you ever hear any discussion about the matter of Union membership in the other departments of the plant?

A. We talked about it; there was discussions at times, yes.

Q. Do you know whether or not there was any requirement of Union membership in the other departments of the plant?

A. There was, yes.

Q. Did you ever hear the words "closed shop" mentioned in discussion among the employees regarding Union

membership?

A. It was understood it was a closed shop. No discussions.

Mr. Woodle: That is all.

Trial Examiner Ringer: Questions?

Cross-examination

Q. (By Mr. Carey) Did you ever see the agreement negotiated in 1935?

829 A. Did I see the agreement negotiated?

Q. Yes, sir.

A. I was present when the agreement was brought up, yes.

Q. Was that a closed shop agreement?

A. It was a closed shop agreement.

Q. Did that cover any other departments than the Polishing Department?

A. It covered the entire plant.

Q. It was a closed shop agreement?

A. It was a closed shop agreement.

Q. Were all the employees in the plant members of the Union?

A. Not at the time, but the understanding was that they were to be members.

Q. Were any employees fired for not being a member of the respective craft Union?

A. Not that I know of.

Q. How long have you been a member of the Metal Polishers' Union?

A. Since October, 1934.

Q. Were you a member of any other Union previous to that time?

A. I was not.

Mr. Carey: That is all.

Mr. Orgill: May I ask a question?

Trial Examiner Ringer: Go ahead.

830 Direct Examination

Q. (By Mr. Orgill) The polisher is a highly skilled person?

A. That is true.

Q. And their wages rank higher than in other departments because of that technical skill?

A. That is true.

Mr. Orgill: That is all.

Mr. Lodish: That is all.

Mr. Woodle: That is all.

Mr. Lodish: I would lie to ask whether the rest of the nine men are polishers and will be asked the same questions and the same answers?

Mr. Woddle: They are not all polishers.

Mr. Lodish: Because we can stipulate that seven or eight more will agree the same thing.

Trial Examiner Ringer: My suggestion is that you just call in the rest of the polishers and made that stipulation and let them be excused, if that is agreeable now.

Mr. Lodish: There is apparently an objection to that.

(Discussion off record.)

Trial Examiner Ringer: Call you next witness.

WILLIAM EDWARD WILSON, called as a witness for the American Federation of Labor, being first duly sworn, testified as follows:

831 Direct Examination

Q. (By Mr. Woodle) Will you state your name?

A. William Edward Wilson.

Q. And your address?

A. 1913 East 70th.

Q. You are a polisher at the Electric Vacuum Cleaner Company?

A. Yes, sir.

Q. How long have you worked there?

A. Four years.

Q. Are you a member of the Polishers' Union?

A. Have been since July 9th, 1934.

Q. Can you tell us whether all the polishers or all the members of the Polishing Department were members of the Union?

A. They had to be to work there.

Q. Do you know what, if any, discussion took place regarding Union membership in the rest of the shop? Was there any discussion out there about that?

A. There has been agitation, but it was supposed to be a closed shop, and there were a few employees here and there that weren't signed up, and they went after them.

Q. Do you know how long ago you first heard a discussion out there about a closed shop?

A. Well, we have heard that they had a verbal contract in there just as soon as we joined the Union.

832 Q. You are talking about your department or all the departments generally?

A. Well, it was understood that all the departments were supposed to be a closed shop.

Mr. Woodle: That is all.

Cross-examination

Q. (By Mr. Carey) Did you join the Metal Polishers' Union at the time you understood there was a closed shop agreement?

A. Will you state that over again, please?

Trial Examiner Ringer: Read it please.

(Last question read by the Reporter.)

A. We joined the Polishers' Union before we understood anything like that about a closed shop.

Mr. Carey: That is all.

Trial Examiner Ringer: Next witness.

Mr. Orgill: May I ask one question?

Trial Examiner Ringer: Yes. Mr. Witness, will you take the stand again, please?

Direct Examination

Q. (By Mr. Orgill) Did you have an understanding about new employees coming in and being compelled to join the Union?

A. New employees were compelled to join the Union, but the old ones could join if they wanted to.

Q. That didn't apply to the Polishers?

A. The Polishers were a craft Union. They had

833 to have cards to get in there.

Mr. Orgill: That is all.

Trial Examiner Ringer: Next witness.

WILLIAM G. WILSON, called as a witness for the American Federation of Labor, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Woodle) Your name is William G. Wilson?

A. Yes, sir.

Q. Are you related to the gentleman that just testified—William Wilson?

A. William E., that is my son.

Q. Your son?

A. Yes.

Q. You are employed at the Electric Vacuum Cleaner Company?

A. Yes, sir.

Q. In the Polishing Department?

A. Yes, sir.

Q. In what capacity? What is the nature of your work?

A. Polishing.

Q. How long have you been employed there?

A. About twelve years.

Q. About twelve years?

A. I was laid off once.

834 Q. Are you a member of the Polishers' Union?

A. Yes.

Q. When did you first join the Polishers' Union?

A. May 14th, 1934.

Q. Are all the employees in your department members of the Union?

A. Members what?

Q. Are all the employees in your department members of the Union?

A. Yes, sir.

Q. Do they have to be?

A. They have to be.

Q. Do you know whether that is true of the rest of the plant?

A. No; I don't know whether it is true of the rest of the plant or not.

Q. Do you know whether new or old employees in the rest of the plant were required to join the union?

A. Yes; they have to join now; before in 1934 the new employees had to join and the old men that was in there didn't have to join unless they really wanted to.

Q. I see. Let me ask you another question or two, Mr. Wilson. Are you a member of the Shop Committee in your department?

A. Yes, sir.

Q. Will you tell us briefly what the duties of the
835 Shop Committee are?

A. Well, if any grievances come up, we take care of it. We try out the jobs. A new job comes in and we try out the job. The foreman puts the men on and we try our job out.

Q. Are there Shop Committees in each department of the plant?

A. Yes, sir.

Q. And those committees are elected by the employees, are they?

A. Yes, sir.

Q. And those committees act for the employees in each department; is that right?

A. (No answer.)

Q. You act for the employees?

A. What is that?

Q. Do you act on behalf of the employees in your department?

A. Yes.

Mr. Woodle: That is all.

Trial Examiner Ringer: Cross-examination.

Cross-examination

Q. (By Mr, Carey) Mr. Wilson, when the Committee men were elected by the employees, did they have to receive

the approval of a business agent?

A. I am a little hard of hearing and you will have to talk a little louder.

Mr. Carey: Will the Reporter please repeat it?

836 (Last question read by the Reporter.)

A. You mean when they come back the last time?

Trial Examiner Ringer: You will have to read that a little louder.

(Last question read by the Reporter.)

A. No.

Q. (By Mr. Carey) Did you know if there was any effort on the part of any of the Union to secure membership among the Metal Polishers?

A. I don't get that either.

Trial Examiner Ringer: Was there any effort by any member of any other Union to secure members among the Metal Polishers?

A. They tried to, yes.

Q. (By Mr. Carey) Did any of them, to your knowledge, sign cards in the C. I. O. Union?

A. I don't get it.

Trial Examiner Ringer: Did any of them, to your knowledge, sign cards in the C. I. O. Union?

The Witness: I think they did, yes.

Mr. Carey: That is all.

Trial Examiner Ringer: Next witness.

JOHN FRAME, called as a witness for American Federation of Labor, being first duly sworn, testified as follows:

837 Direct Examination

Q. (By Mr. Woodle) Your name is John Frame?

A. Yes.

Q. And your address is 1733 Irvana Road?

A. That is true.

Q. You are employed at the Electric Vacuum Cleaner Company?

A. Plating Department.

Q. Plating Department?

A. Yes.

Q. Is that the same as the Polishing Department?

A. That is a craft. We are in the Local the same as the Polishers.

Q. You come under the jurisdiction of the Polishers' Union?

A. Absolutely.

Q. Are you a member of the Polishers' Union?

A. Yes, sir.

Q. For how long have you been a member?

A. Since 1935.

Q. Are all of the employees in the Plating Department members of the Polishers' Union?

A. One hundred per cent.

Q. Do they have to be?

A. Under the new agreement, they have to be.

Q. Did you know of any agreement in existence between the American Federation of Labor Unions and
838 the management of the Electric Vacuum Cleaner Company regarding membership in the American Federation of Labor Unions, Mr. Frame?

A. You mean right now or the old agreement?

Q. No; in 1935 and 1936.

A. It was optional in 1935 and '36, whether the old men joined or not. There was an understanding that the new men joined when they come in after a period of about a few days.

Q. You knew about that; did you?

A. Yes.

Q. Do you know whether other members of the Shop knew about that agreement?

A. Yes, sir.

Q. Was there a general knowledge among the employees about that arrangement?

A. Yes, sir.

Mr. Woodle: That is all.

Trial Examiner Ringer: Cross-examination.

Cross-examination

Q. (By Mr. Carey) Mr. Frame, how long have you been

a member of the American Federation of Labor Union?

A. Since 1935.

Q. Were you ever a member of the M. E. S. A.?

A. Yes, sir.

Q. When did you join the American Federation of Labor?

A. In July, 1935.

839 Q. Do you know Louis Delauer?

A. Yes, sir.

Q. Did he work in your department?

A. He worked in the weld; yes, sir.

Q. Was he fired for not joining the American Federation of Labor Union?

A. Not to my knowledge he was not.

Q. Do you know why he was fired?

A. No.

Q. Do you know Tony Valerio?

A. Yes, sir.

Q. Was he fired from the Electric Vacuum Cleaner Company?

A. He was dismissed; yes, sir.

Q. Do you know why he was dismissed?

A. No, sir. As far as I understand, his work was not satisfactory at that time. As a committee man down there, I had previous complaints down there regarding that.

Q. You were a committee man for what union?

A. Right now?

Q. At that time.

A. M. E. S. A.

Q. Were they members of the M. E. S. A.?

A. At that time?

Q. Yes, sir.

A. When he was dismissed?

840 Q. Yes.

A. No, sir.

Q. Was Louis Delauer a member of the M. E. S. A.?

R. At the time of his dismissal?

Q. Yes, sir.

A. No, sir.

Q. Was he previous to that?

A. Yes, sir.

Q. Did he join the American Federation of Labor?

A. No, sir.

Q. At the time you joined the American Federation of Labor Union, did you know that there was a C. I. O. Union in existence?

A. No, sir.

Mr. Woodle: I am sorry. I didn't hear the question.

Mr. Lodish: You are too late. It is answered.

Mr. Woodle: What was the question?

Mr. Lodish: The question was: Did you know the existence of a C. I. O. Union at that time? He said no.

Mr. Lodish: That is all.

Trial Examiner Ringer: All right. Next witness.

HUGH DOUGHERTY, called as a witness for American Federation of Labor, being first duly sworn, testified as follows:

Direct Examination

841 Q. (By Mr. Woodle) Your name is Hugh Dougherty?

A. Yes, sir.

Q. That is spelled D-o-u-g-h-e-r-t-y?

A. Yes, sir.

Q. And your address is 14318 Woodland Road?

A. Yes, sir.

Q. You are employed at the Electric Vacuum Cleaner Company?

A. Yes, sir.

Q. What is the nature of your work?

A. Machinist.

Q. In what department do you work?

A. Ball Bearing.

Q. Are you a member of the Machinists' Union?

A. Yes, sir.

Q. For how long have you been a member of the Union?

A. Over two years.

Q. In 1935 or 1936, was your attention directed to any

rules of the organization requiring membership in the Union?

A. I don't get it.

Q. Mr. Woodle: Will you read the question?

(Last question read by Reporter.)

A. Well, some.

Q. (By Mr. Woodle) What did you know, Mr. Dougherty, about the rule of the plant regarding requiring membership in the Union?

842 A. I understood that the new members that came in was to be American Federation of Labor members, also I understood that the old employees within the factory, it was their own wish to belong to the American Federation of Labor.

Q. When did you first start to work there?

A. Seven years ago.

Q. Seven years ago?

A. Yes.

Q. Did you become a member of the Union of your own accord?

A. Yes, sir.

Q. Did you ever sign a C. I. O. card?

A. No, sir.

Mr. Woodle: That is all.

Cross-examination

Q. (By Mr. Carey) Did you ever belong to the M. E. S. A.?

A. Yes, sir.

Q. When did you join the American Federation of Labor?

A. It was at the time that the body as a whole joined.

Q. The M. E. S. A. joined the American Federation of Labor?

A. Yes, sir.

Q. Did you know Louis Delauer?

A. Louis Delauer? I think he is better known as "Curly," is he?

Q. No.

A. No.

843 Q. Did you know Tony Valerio?

A. No; I don't recollect.

Mr. Carey: That is all.

Trial Examiner Ringer: Next witness.

(Discussion off record.)

Trial Examiner Ringer: Proceed.

HENRY HUFFMAN, called as a witness for the American Federation of Labor, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Woodle) Your name is Henry Huffman?

A. Yes, sir.

Q. Your address is 7925 Hope Avenue?

A. Yes, sir.

Q. You are employed at the Electric Vacuum Cleaner Company?

A. Yes, sir.

Q. What is the nature of your work?

A. I do grinding.

Q. What department? What plant are you employed in?

A. The Ball Bearing Department.

Q. Are you a member of a union?

A. I am a member of the International Association of Machinists.

Q. How long have you worked at the Electric

844 Vacuum Cleaner Company?

A. Approximately nine years.

Q. How long have you been a member of the Machinists' Union?

A. Pretty close to two years.

Q. When did you join the Machinists' Union?

A. Must have been either the end of June or beginning of July, 1935.

Q. In 1935 and 1936, did you know of any arrangement regarding membership in the Union as to whether it was required or not?

A. We were instructed that that was supposed to be a closed shop. We kept it up in our department as a closed shop.

Q. Were all employees required to join or only new employees required to join?

A. Only new ones were required to join.

Q. But you did join?

A. All the old ones in our department joined one hundred per cent.

Mr. Woodle: That is all.

Cross-examination

Q. (By Mr. Carey) Mr. Huffman, did you belong to the M. E. S. A.?

A. I did.

Q. Were you an active member in that organization.

A. Not very active.

845 Q. Did you hold a position as being committee man at the time of the strike?

A. Not during the strike.

Q. Did you hold a position as committee man with the M. E. S. A. at one time?

A. When they first started out.

Q. How long were you a member of the M. E. S. A.?

A. From the time they started organizing until the time the strike started.

Q. Then at the time of the strike did you become affiliated with the American Federation of Labor?

A. After the strike was all settled, I did.

Mr. Carey: That is all.

Trial Examiner Ringer: Next witness.

HARRY DENNER, called as a witness for the American Federation of Labor, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Woodle) Your name is Harry Denner?

A. Yes, sir.

Q. D-e-n-n-e-r?

A. Yes, sir.

Q. And your address is 1853 Rayburn Road?

A. Yes, sir.

846 Q. You are employed at the Electric Vacuum Cleaner Company?

A. Yes, sir.

Q. In what capacity?

A. Machinist.

Q. In what department?

A. Drill press.

Q. Drill Press Department?

A. Yes, sir.

Q. How long have you worked at the Electric Vacuum Cleaner Company?

A. Two years.

Q. About when did you start work there?

A. July 1st, about July 1st.

Q. In 1935?

A. 1935.

Q. Are you a member of a Union?

A. I am.

Q. What Union?

A. International Association of Machinists.

Q. How long have you been a member of that Union?

A. Since April.

Q. Of what year?

A. This year.

Q. Since April of this year?

A. Yes.

847 Q. In 1935 and 1936, was anything said at the plant about requirements of joining a Union?

A. I didn't get that.

Mr. Woodle: Read the question.

(Last question read by the Reporter.)

A. Nothing was ever said to me.

Mr. Lodish: What is the answer?

(Last question read by the Reporter.)

Q. (By Mr. Woodle) And you did not join the International Association of Machinists, District 54, until this

April; is that right?

A. I didn't hear you.

Q. You did not join the International Association of Machinists, District 54, until this April?

A. No.

Q. Did you at any time sign a membership card in the C. I. O.?

A. I did.

Q. Did you ever attend any of their meetings?

A. Never did.

Mr. Woodle: I think that is all.

Cross-examination

Q. (By Mr. Carey) When did you become aware that it was necessary to belong to an American Federation of Labor Union?

A. I belonged to the American Federation of
848 Labor for the past four years.

Q. Did you see the agreement that was in existtence?

A. I didn't see any; no.

Q. Did you belong to the International Association of Machinists in September, 1933?

A. No; I belonged to another American Federation of Labor organization, another craft.

Q. When did you join the International Association of Machinists?

A. April.

Q. April of this year?

A. Yes.

Q. What craft in the American Federation of Labor did you belong to?

A. The Architectural and Metal Workers.

Q. Did you drop your membership in the Architectural and Metal Workers?

A. I have, yes.

Q. When did you drop your membership in that organization?

A. I resigned this month.

Q. Just this month?

A. Yes.

Q. Were you a member of the Architectural Engineers at the same time you were a member of the International Association of Machinists?

849 A. I held my membership, yes.

Q. Were you a member of the International Association of Machinists and the Architectural Engineers at the time you signed an application in the C. I. O. Union?

A. Yes.

Mr. Carey: That is all.

Mr. Woodle: That is all, Mr. Denner.

Trial Examiner Ringer: Just a moment.

Examination by Trial Examiner Ringer.

Q. (By Trial Examiner Ringer) Was it when you went back to work after the strike that you joined this craft union in the American Federation of Labor?

A. Yes.

Q. That is when you signed?

A. Yes.

Trial Examiner Ringer: That is all.

The Witness: But they were after me to join the Machinists prior to the trouble out there.

Q. (By Trial Examiner Ringer) But in order to get back after the strike, you joined this Craft Union of Machinists?

A. Well, not necessarily. I figured that my card from the other Local would transfer me over, but after I see a transfer couldn't be made, I joined up.

Trial Examiner Ringer: All right. Next witness. That will be all, Mr. Denner.

850 Mr. Lodish: That is all.

JAMES DOBERT, called as a witness for the American Federation of Labor, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Woodle) Your name is James Dobert?

A. Right.

Q. And your address 8901 Park Heights Avenue?

A. Yes.

Q. That is in Garfield Heights, is it?

A. Yes, sir.

Q. You are employed at the Electric Vacuum Cleaner Company?

A. Yes, sir.

Q. What is the nature of your work there?

A. I would in the Grinding Department, running a lathe.

Q. How long have you worked at the Electric Vacuum Cleaner Company?

A. Since 1934.

Q. Are you a member of the Union?

A. Yes, sir.

Q. What union?

A. International Association of Machinists, Local No. 1130.

Q. How long have you been a member of that Union?

A. Since 1935.

851 Q. What part of 1935 did you join the Union?

A. July.

Q. July of 1935?

A. Yes.

Q. Was ther anything said at that time about the requirement of joining a union at the plant?

A. Not for the old men.

Q. You joined of your own accord; is that it?

A. Yes.

Q. The new men were supposed to join, were they?

A. That was the understanding.

Q. That was the understanding?

A. Yes.

Q. When you say "the understanding," you mean it was generally known at the shop?

A. Yes.

Mr. Woodle: That is all.

Trial Examiner Ringer: Cross-examine.

Cross-examination

Q. (By Mr. Carey) Did you ever belong to any other union?

A. Yes.

Q. What organization?

A. M. E. S. A..

Q. How long did you belong to the M. E. S. A.?

A. About eight months.

852 Q. When did you become a member of the American Federation of Labor—after you had been a member of the M. E. S. A.?

A. Yes, after.

Mr. Carey: That is all.

Trial Examiner Ringer: Next witness.

Mr. Woodle: I will call Mr. Demore.

MATT DEMORE, called as a witness for the American Federation of labor, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Woodle) Your name is Matt Demore?

A. That is right.

Q. And your address is 12313 Ashbury?

A. That is right.

Q. You are employed at the Electric Vacuum Cleaner Company?

A. That is right.

Q. In what capacity?

A. As a belt man in the Millwright Department.

Q. And under the jurisdiction of what union does that work come?

A. International Association of Machinists, Local No. 439.

Q. Are you a member of the Machinists' Union?

A. Yes, sir.

Q. How long have you been employed at the Electric Vacuum Cleaner Company?

853 A. It will be four years in September.

Q. Did you always do the same type of work?

A. That is right.

Q. How long have you been a member of the Machinists' Union?

A. Since August 15, 1935.

Q. Did you know at that time, the time you joined the union, whether there was any requirement in the shop regarding joining the union?

A. New men, I knew, were supposed to be in the union.

Q. When you say "new men" what do you mean by that?

A. Any man hired was to go into the union when he came to work there.

Q. What about old employees?

A. I was always given to understand that it was optional so far as they were concerned.

Q. When you joined the International Association of Machinists, you joined of your own accord; is that it?

A. That is right.

Q. Where did you join—where did you become a member of the Association?

A. I went down to the office to sign up.

Q. When you say "the office" you mean—

A. The Metal Trades Hall.

Mr. Woodle: That is all.

Cross-examination

854 Q. (By Mr. Carey) Are you an officer of the Association, of the International Association of Machinists?

A. Yes, sir.

Q. What office do you hold?

A. President of Local 439.

Q. Were you a member of the M. E. S. A.?

A. Yes, sir.

Q. Did you hold office in that organization?

A. Yes, sir.

Q. What office did you hold?

A. President.

Q. President of Local No. 20?

A. That is right.

Q. Did you know a member of the M. E. S. A. named Louis Delauer?

A. Yes, sir.

Q. Was he employed at the Electric Vacuum Cleaner Company?

A. Yes, sir.

Q. Do you know if he is employed at the Electric Vacuum Cleaner Company?

A. No; he is not.

Q. Was he dismissed from the Electric Vacuum Cleaner Company in 1935?

A. I think he was.

Q. Do you know Tony Valerio?

855 A. Yes.

Q. Was he dismissed the same time as Delauer was dismissed?

A. I don't know if it was the same time, and I don't know whether he was dismissed or not, but he left—I noticed he didn't work there after a while. I heard some time after he left he had been dismissed, but whether he was or not I don't know.

Q. Did they belong to the M. E. S. A.?

A. Yes, they did.

Q. Were they active in the organization?

A. I wouldn't say any more active than the average rank and file member.

Mr. Carey: That is all.

Trial Examiner Ringer: Next witness.

Redirect Examination

Q. (By Mr. Woodle) Mr. Demore, there was a strike in 1935 that was called by the M. E. S. A.; wasn't there?

A. Yes.

Q. At that time you said, I believe, that you were the President of that organization?

A. Yes.

Q. At any time during the progress of that strike, Mr. Demore, did your organization receive any cooperation

from any representatives of the American Federation of Labor Union?

A. Well, I don't know.

856 Mr. Lodish: Mr. Examiner, he has answered that question. I wonder if we could have non-leading questions for a while. Just ask him what happened.

Mr. Woodle: That is all right. The previous matters were gone into; it is entirely repetition.

Trial Examiner Ringer: At request of counsel, they should be a little less leading.

Mr. Woodle: That is all right.

Q. (By Mr. Woodle) Let me ask you this question, Mr. Demore, do you know whether or not at the conclusion of that strike there was any discrimination between former members of the MESA in re-employment at the Electric Vacuum Cleaner Company?

A. Not to my knowledge.

Mr. Woodle: That is all.

Trial Examiner Ringer: Call your next witness.

M. C. PARKS, called as a witness for the American Federation of Labor, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Woodle) Will you state your name, please?

A. I beg your pardon?

Q. Your name?

A. M. C. Parks.

857 Q. Your address?

A. 14212 Coit Road.

Q. You are now employed at the Electric Vacuum Cleaner Company?

A. Right.

Q. In what capacity?

A. Tool maker.

Q. Is there a special department for your work?

A. Yes; there is.

Q. What is that known as?

A. Tool room.

Q. Tool room?

A. Right.

Q. Are you a member of the Union?

A. Since August 15th, 1935.

Q. How long have you been employed at the company?

A. Sixteen years.

Q. In August of 1935, did you know of any arrangement between the company and the Unions whereby membership in the Union was required of anyone?

A. It was for new employees I understand, those coming in.

Q. Was that your understanding at that time.

A. That was my understanding at that time.

Q. Was that the general understanding in the shop, do you know?

858 A. Absolutely.

Mr. Woodle: That is all.

Cross-examination

Q. (By Mr. Carey) Did you know of any activity of the International Association of Machinists in securing members in the Electric Vacuum Cleaner in 1933?

Mr. Spieth: I object. There is no issue in 1933, your Honor.

Trial Examiner Ringer: That is not touching on anything, I think, that was gone into on direct examination. If you want to make him your witness and ask him that question, it is all right on that.

Mr. Carey: Withdraw the question.

Q. (By Mr. Carey) Do you belong to any other union besides the International Association of Machinists?

A. No, sir.

Q. Did you belong to the MESA Union?

A. Yes.

Q. Do you mean you were wrong in answering my question that you did not belong to any other union?

A. I thought you meant at present.

Q. No. Did you belong to any union before you became a member of the Machinists?

A. Yes; I belonged to the MESA.

Q. Were you an active member of the MESA?

859 A. Yes; I was on the Committee at the factory.

Q. Did you belong to any other union previous to that?

A. Previous to that I belonged to the International Association of Machinists.

Q. You were then a member of the International Association of Machinists and later became a member of the MESA?

A. That is correct.

Q. When did you rejoin the International Association of Machinists this last time?

A. August 15th, 1935.

Q. That was after the strike?

A. That is right.

Q. Of the MESA?

A. Yes.

Q. Did you participate in the strike?

A. Yes.

Mr. Carey: That is all.

Trial Examiner Ringer: Next witness.

Mr. Orgill: May I inquire, your Honor?

Trial Examiner Ringer: Yes.

Direct Examination

Q. (By Mr. Orgill) How long did you work at the Electric Vacuum Cleaner Company?

A. Sixteen years.

Q. What is your salary out there?

860 A. It is on an hourly basis now, a dollar and twenty-five cents an hour.

Mr. Orgill: That is all.

Trial Examiner Ringer: Next witness.

RAY MUEHLHOFFER, called as a witness for the American Federation of Labor, being first duly sworn, testified as follows:

Testimony of Ray Muehlhoffer

Direct Examination

Q. (By Mr. Woodle) Your name is Ray Muehlhoffer?

A. That is right.

Q. And you are representative of the Polishers' Union?

A. Yes, sir.

Q. What is your capacity in that union?

A. Business Representative, Local No. 3.

Q. And as such Business Representative, what are your duties, Mr. Muehlhoffer?

A. Handle all grievances and to organize this district and surrounding districts.

Q. How long have you been a Business Agent of the Polishers' Union?

A. Three to four years.

Q. How far back did your contact with the Electric Vacuum Cleaner Company go?

A. First contact with the Electric Vacuum
861 Cleaner Company was sometime in June of 1934.

Q. What took place at that time?

A. At that time I was on the committee representing the Polishers.

Q. Were you employed there at that time?

A. That is right.

Q. In the Polishing Department?

A. That is right. I went in to the management and informed them of the fact that we had the majority of the Polishers organized, and demanded collective bargaining rights.

Q. I didn't hear the last part of that answer.

A. Demanded collective bargaining rights.

Q. Did you enter into any arrangement with the management with reference to collective bargaining?

A. We did.

Q. What were your arrangements?

A. It was agreed at that time that our organization would represent the Polishing Room. We also entered negotiations for a wage raise and working conditions.

Q. How many employees of the Polishing Department were members of the Union then?

A. In June?

Q. Yes.

A. At that time I would say that it was about ninety per cent organized. There were two men that ha[d]
862 not joined for the simple reason that they thought they were straw bosses.

Q. Did these men later join the Union?

A. They did.

Q. So that you then had one hundred per cent membership?

A. That is right.

Q. Do you have one hundred per cent membership now?

A. Have had ever since.

Q. You have had continuously since that time?

A. Yes.

Q. Have you had occasion to enter into negotiations with the management of the company regarding wages, hours, and working conditions since that time?

A. We have entered into considerable negotiations so far as wages and the rates on certain jobs were concerned, to tell the truth, at one time, for about a month, all I did was handle the Premier.

Q. When was that?

A. That was in 1935, when we were first adjusting a lot of the rates in there that had been stepped up through the depression to the extent that we thought it was a little bit harder that we thought the men should be working.

Q. How long did you continue to work out at the Electric Vacuum Cleaner Company, Mr. Muehlhoffer?

A. I worked there until January or February of 1935. I am not just exactly sure about that.

863 Q. Did the Polishers' Union take any part in the strike which occurred at that plant in the Spring of 1935?

A. We had no grievance at that time. We had already settled all grievances pertaining to the Polishers.

Q. You had no grievances?

A. That is right.

Q. You didn't call a strike in your department; did

you?

A. No, sir.

Q. Do you know about how many members the M. E. S. A. had at the time the strike was called?

A. It would be impossible for me to say definitely, but I have been told on very good authority at the time the strike was called—

Mr. Carey: I object.

Trial Examiner Ringer: Sustained. Let the answer go out, if it was made.

Q. (By Mr. Woodle) That strike lasted for a number of weeks; is that right, Mr. Muehlhoffer?

A. That is right.

Q. You were in the court room this morning when Mr. Gordon testified I believe?

A. Part of the time.

Q. Did you hear the testimony given by Mr. Gordon regarding cooperation that was extended to the M. E. S. A. by Mr. Gordon and by yourself during the progress of that strike?

864 A. I was not in the room at that time.

Q. Did you personally render any assistance to the M. E. S. A. or its officers during the time of that strike?

A. Towards the latter part of the strike it seemed that the officers of the M. E. S. A. were either taking an attitude that they didn't want to do anything or that they couldn't do anything, and then they told us that they were willing to—

Mr. Griff: I object to that answer. It is a conclusion.

Trial Examiner Ringer: Overruled.

A. The committee came to us and asked us at that time if we could make an appointment with the Conciliator.

Q. (By Mr. Woodle) When you say "committee" what committee do you mean?

A. M. E. S. A. Committee.

Q. When you say "us" who do you mean?

A. I am referring to the different representatives who were active at that time in this different organization. We made this appointment and George McKinnon and myself sat in on the meeting with the committee and the officers of

the M. E. S. A. and Faulkner in the Conciliator's office.

Q. Were you in any way instrumental in arranging that meeting personally?

A. I was the man that called Faulkner to make the appointment for that meeting?

Q. You called Mr. Faulkner yourself?

865 A. That is right.

Q. Had there been previous meetings between the M. E. S. A. representatives and the company?

A. I think that they had had one or two meetings before that.

Q. Do you know what the result of those meetings had been?

A. The result was a deadlock.

Q. What took place after the meeting that you arranged between the M. E. S. A. and the management?

A. The meeting that we arranged ended up after a settlement had almost been reached for a one cent an hour raise for the shop by one of the officers of the other organization making a few smart remarks to Mr. Tuteur who immediately withdrew any negotiations and refused to deal with them.

Q. So that no settlement was reached at that meeting?

A. No, sir.

Q. What subsequently took place on the part of any members of the M. E. S. A.? What did they do after that?

A. Well, they were out on the line for practically a week, I guess, or so after that meeting. Then we were being asked why they couldn't tell the truth. The question was asked why they couldn't come in with the polishers. I told them we were strictly a craft organization and didn't want anything to do with people who didn't come under our jurisdiction, so I informed them to contact the

866 Metal Trades, and a meeting was arranged.

Q. Who was present at that meeting?

A. Mr. McKinnon, Mr. Martin, and myself.

Q. Who is Mr. McKinnon?

A. The American Federation of Labor organizer.

Q. Organizer for any particular union or for the American Federation of Labor?

A. General American Federation of Labor organizer.

Q. General organizer?

A. Yes.

Q. And that meeting was held at the Metal Trades Hall?

A. That is right.

Q. How many attended that meeting?

A. The first meeting I judge, well we have cards that there were one hundred and seventy-five there.

Q. Was there a subsequent meeting?

A. What is that?

Q. Was there another meeting?

A. At that time we told the members that we didn't want anything to do with the minority group, and they assured us that they would at the next meeting have a big majority, and we told them if they did that then we would talk to them. Another meeting was held, and they did have a large majority.

Q. How many were there at that meeting?

A. I would say at that time close to five hundred, 867 maybe a little over that.

Q. That meeting was also held at the Metal Trades Hall?

A. That is right.

Q. What, if anything, did these people do regarding membership in the American Federation of Labor?

A. They all signed up on our cards at that time.

Q. They voluntarily signed membership cards in the American Federation of Labor?

A. That is right.

Q. And were these people that signed at that meeting former members of the M. E. S. A.?

A. At that time I would say that there was only about one hundred and fifty-two in the entire plant were members of the M. E. S. A.

Q. And the rest of them had belonged to no union; is that it?

A. At one time had belonged, but their dues had not been paid up for six or seven months.

Q. What did you do then after this meeting at which

these members signed up?

A. At that time we submitted to them an agreement which we asked them if they would be willing to look over and we contacted the management at the plant, told them that: "We at this time represent the majority of your employees and we present you with this agreement."

868 They immediately questioned whether we represented the majority, and we had to bring in definite proof in the form of cards and applications to show them that we had the majority in the plant. They then entered into negotiations of an agreement with us, and the plant was reopened.

Q. You brought in the cards that they requested you to bring in?

A. Yes, sir.

Q. Do you know what they did with the cards?

A. They checked the cards according to the number of the employees that were working in the plant.

Q. That is, they checked the cards against the payroll?

A. That is right.

Q. And following that, they entered into a contract with the affiliated unions, that contract being in evidence, marked Board's Exhibit No. 5?

A. That is right.

Mr. Spieth: Attached to the answer of Board's Exhibit No. 5.

Mr. Woodle: I think that was put in.

Mr. Lodish: Yes; it is in twice.

Q. (By Mr. Woodle) How long was that contract in effect?

A. One year.

Q. And at the end of the time that that contract was in effect, did you participate in negotiations for an-

869 other contract?

A. I did.

Q. Who else participated in those negotiations?

A. All the organizations concerned.

Q. And when you negotiated for a contract in June of 1936, did you produce any proof to the management that you represented a certain number of employees in the com-

pany?

A. Insofar as our organization was concerned, we at that time didn't have to produce any proof because a man, to work in that shop, must receive a card from our office.

Q. Everybody in your department; that is, the Polishers Department?

A. That is right.

Q. Did that also include the Plating Department?

A. It did, after we took over the Plating Department. At the start, we didn't have the Plating Department.

Q. When did you take over the Plating Department?

A. Some time in 1935. I don't know just exactly. Maybe August or September.

Q. Does the work of the Plating Room come under the general jurisdiction of your Union?

A. Jurisdiction of our Union is Metal Polishers, Buffers, Platers, and Helpers.

Q. In June of 1935, when you entered into this contract with the management referred to as Board's Ex-
870 hibit No. 5, what discussion was there between the Union representatives and the management regarding a closed shop?

A. At that time it came up the organization were asking for an entirely closed shop. I think that the reason for asking that was that we had already established that condition, but it was brought out that there were quite a few of the older men in the shop in the other departments that did not belong and it might work a hardship, and Mr. Tuteur, being a little chickenhearted, feared to hurt these men in laying them off, so it was agreed then that we would not insist but would bend all our efforts toward not making these men come into our organization, but any new men hired, after a two-weeks trial period, would have to belong to our organization.

Q. Do you know whether that agreement you made with the management was actually put into effect?

A. It was to a certain extent, but it seems that in a certain instance we were possibly a little lax in enforcing the agreement we had at that plant. There wer quite a few that were allowed to work that didn't belong.

Q. In June, 1936, when the contract for the following year was being negotiated, was any discussion entered into regarding the closed shop agreement which you had?

A. In June of 1936—you mean that I have on that—

Q. That the unions have?

A. In 1936, we again entered into an agreement
871 that, as our relationship on a verbal basis had been very satisfactory, that we were willing to continue with the verbal agreement or part of it, but it was insisted again at that time that some of the employees in that plant must come into our organization.

Q. Is that agreement which you have described to us, Mr. Muehlhoffer, known as the preferential closed shop?

A. It is, I imagine, called that. Our organization, we don't have much to do with preferential closed shops.

Q. Polishers' Union—is it the practice, then, of the Polishers' Union to insist on one hundred per cent membership?

A. Any shop that we have the majority in—we have them all or our people don't work.

Mr. Woodle: It is about twelve o'clock. We have considerable more testimony from this witness, and if the Court desires perhaps we had better suspend until this afternoon.

(Discussion off record.)

Trial Examiner Ringer: We will adjourn until two o'clock.

(Thereupon, at 12 o'clock noon a recess was taken until 2 o'clock p. m.)

After Recess

(The hearing was resumed at 2 o'clock p. m., pursuant to the taking of recess.)

Trial Examiner Ringer: May we go forward now.

RAY MUEHLHOFFER, the witness on the stand
872 at the time of recess, resumed the stand and testified further as follows:

Mr. Woodle: What is the last question and answer, please?

(Last question and answer read by the Reporter.)

Direct Examination (Continued)

Q. (By Mr. Woodle) Mr. Muehlhoffer, returning to the situation at the plant, during the time that it was closed, I believe you testified that you had meetings with the management during that time?

A. During the time it was closed in 1937, you mean?

Q. Yes.

A. That is right.

Q. And one of those meetings took place on Saturday morning, April 3rd, at the office of Mr. Spieth; is that right?

A. I remember it was on Saturday morning, but I don't know what date it was.

Q. Saturday morning before the plant opened?

A. That is right.

Q. And at that meeting certain arrangements were made for the mechanics of getting the men back to work; do you recall that?

A. That is right.

Q. Will you tell us what you know, Mr. Muehlhoffer, about the mechanics of that work that were arranged at that meeting?

A. Well, at that meeting it was agreed that all
873 the people that go back in there to work the following Monday would carry a card issued by the respective organizations, and arrangements would be made for the officers to be in the Metal Trades Hall on a Sunday to issue those cards. On a Monday morning they had rented a room across from the entrance to the plant where these cards could be issued. A man was kept in that room at all times to issue these cards. In the case of our organization we didn't have but very few cards to issue out as we issued all ours on a Saturday and Sunday prior to that.

Q. Was this arrangement made for the purpose of facilitating the distribution of cards, making it easier to get them?

A. That is right. We felt that a lot of people wouldn't see the notice in the paper and would not get down there on Sunday, so we had a room at this house so they could issue cards from there.

Q. Were any instructions given or discussed as to who was entitled to receive cards?

A. The only instructions given was by myself, that certain members that we had fined or expelled from our organization, that they were supposed to be sent down to me before they were to receive cards.

Q. Coming back to members of your organization, there has been some testimony here that about a dozen or fifteen former employees of the Electric Vacuum Cleaner Company who are now no longer employed there—you heard
874 that testimony; did you not?

A. I heard some of it.

Q. Some of them were men that had been employed there a number of years apparently. What, if anything, did you do about these men who had been employed in your department, in instructing someone as to whether they were to receive cards or not?

A. So far as I was concerned, it was left entirely up to the committee in that plant. They knew who these men were and their names were posted. They were tried in front of the Local.

Q. It was not at your personal instigation, then, that these men were refused cards?

A. As far as I am concerned, I even issued cards to some of them, but they were turned down by the men in the shop.

Q. Did you hear testimony of one of the men that you gave him a clearance card marked on the back "O. K. by Committee" and sent him back to the shop?

A. That is right. I probably did that.

Q. Is that one of the men you are referring to?

A. I did that to a few of them.

Q. Then if any men were refused cards who had been employed in the Polishing Department, that refusal was as a result of the efforts of the Shop Committee or the decision of the Shop Committee?

A. It was up to a certain time until we had re-
875 ceived our instructions from the International in regard to fineing a member of our organization. The Local can go only so far and then the International Board

has to rule whether this fine was justified or not. We had not yet received sanction from the International that the five hundred dollars fine was to be put on. Our fine of fifty dollars was all there was at the time. I myself didn't want it as strict as I did after the fine was put on. At the present time, those men could not work in any of our shops.

Mr. Woodle: I don't know if we had any exhibits or not. Will you mark this American Federation of Labor Exhibit for identification?

(A. F. L. Exhibit No. 1 so marked for identification.)

Mr. Spieth: I think you had one exhibit.

Mr. Woodle: We were going to have, but I think it went in as someone else's.

Q. (By Mr. Woodle) Mr. Muehlhoffer, I will hand you this book which has been marked for identification American Federation of Labor Unions Exhibit No. 1 and ask you what that is?

A. It is the By-laws of the Metal Polishers, Platers, Buffers, and Helpers' International Union.

Q. That is the Union of which you are the Business Agent?

A. That is right.

Q. And of which Local No. 3 is one of the affiliates?

A. That is correct.

876 Q. Do you know whether or not the members of your Union in Local No. 3 were familiar with the rules contained in this exhibit?

A. Yes; they should have been familiar, especially certain people that testified from this stand should have been very familiar with them as they attended the convention in 1929 that drew up those laws and were at one time business representatives of Local No. 3.

Q. Were the rules and regulations contained in this book in effect in March of this year?

A. That is right.

Q. There have been—have there been any material changes in those rules?

A. There has not been any change. There can't be any change until September of this year at the convention.

Q. Directing your attention, Mr. Muehlhoffer, to the following paragraph contained on Page 49 of American Federation of Labor Union Exhibit No. 1, headed "Member's Duty, Section 1; No member of this Union shall be allowed to injure the interests of another by undermining them in wages or by any other willful act by which the situation of any members may be placed in jeopardy." I will ask you whether or not following the closing of this plant on March 19th, 1937, this rule was invoked against any of the members of your Union?

A. It was.

877 Q. I will ask you whether or not the rule was invoked against those members of the Polishers' Union who testified here on behalf of the complainant?

A. I imagine it was the exact people it was invoked against.

Mr. Lodish: I will object.

Trial Examiner Ringer: It may be stricken out as being speculative.

Q. (By Mr. Woodle) Do you know whether this rule was invoked against those members of your Union who testified here on behalf of the complainant?

Mr. Lodish: I will object to that. He said he heard part of the testimony. He doesn't know who you were referring to.

Trial Examiner Ringer: Sustain the objection. Make it specific. You refer to individuals, I assume.

878 Q. Mr. Muelhoffer, you have testified that you were formerly employed at the Electric Vacuum Cleaner Company?

A. That is right.

(Discussion off the record.)

Q. Were you familiar, or are you familiar with the physical set-up of that plant, so far as it relates to the work of the plant and production and maintenance?

A. Well, I am to a certain extent, yes.

Q. Can you describe, in general, the manner in which the production work in that plant is carried out, and with the various stages through which it proceeds and the places where the work is done?

A. Well, that is a long job. In the first place, the work naturally starts in the foundry—either in the Moulding Department or the Die Casting Department.

Q. Is the foundry in a building together with the rest of the Departments?

A. The Foundry and the Die Casting is in a separate building. It is trucked from there into the Machine Shop where the castings are partly machined. They then go from there into another building, which is the Polishing Room, where the castings are finished, are polished and buffed and made ready to go back up to the Assembly Department. There may, at times, on some of the jobs, in my experience out there, that they have machined after
879 they have been polished, in case they have missed it on a different operation. As a rule, they go into the Assembly Department. From the Assembly Department they go to the fourth floor, which is the Packing. From the Packing, they are shipped through a conveyor to the Shipping Department, which is another separate building, which contains the Ball Bearing Department. That is practically the set-up of the entire thing.

Q. About how many different buildings comprise the company's plant?

A. Well, there is the Foundry, Polishing Room, the Bearing Department—of course, that building is split in two; part of it is used for the Shipping Department—then there would be the main building which houses the Machine Shop, Assembly Department and the Packing Room, Cutting and Sewing Departments.

Q. So far as the actual nature of the work that is done in these various departments is concerned, would you say that there is any similarity between the nature and types of work done there or are they distinctly different?

A. Well, there is a distinct difference in the work. Naturally a man that is a moulder isn't a polisher and that is the reason that our different crafts have been established. In the past fifty years, we have found out through experience just exactly who we can represent and the proper method and that is the reason for the craft establishment.

880 Q. You know that there are five different craft unions at the Electric Vacuum Cleaner plant?

A. At the present time, there are four craft unions and what we classify as a Federal organization, which is a general organization.

Q. The four craft unions are members of regular craft unions of the A. F. of L.?

A. That is right.

Q. I believe you said something a moment ago about the experience upon which these various craft unions have been based. That experience, which has given rise to the existence of these crafts has been based on experience along what lines?

A. Well, to just go back a long ways in the history of our organization: at one time we had a name about this long (illustrating). We took in silver workers and everybody imaginable. So we found out that we could not represent those people. So we made it a proposition that we would represent the people only directly concerned in our work, which is the Metal Polishers, Buffers, Platers and Helpers.

Q. You mean that people doing metal polishing, buffind, plating and helping work and certain peculiar interests that were peculiar to their type of work?

A. That's right.

Q. And is the same thing true of the Machinists and the Moulders and the Pattern Makers?

881 A. It holds true in any case of any tradesman that you will find any place. You know, after all is said and done, the average tradesman is jealous of his name, and he doesn't want a sweeper coming in and representing him in regard to wages and conditions at the plant.

Q. It has been testified that there were shop committees in the various Departments. When there was a grievance or question arising in any one of the Departments, with reference to wages or hours of working conditions in that Department, was that particular grievance handled by a committee only from that Department, or did a committee from some other Department come in and adjust the

grievance?

A. It was general conditions for the entire plant, it was the only time that all the committees came in. If it was a condition of one unit—the Polishers obtaining a five-minute wash-up period at lunch time; our committee only negotiated that. Or we obtained ten or fifteen minutes in the evening. If it was the condition of the amount of pieces to be run per hour in our Department. At no time did any other committee step into the picture. As I said before, they would not have known our business and we don't want people representing us who don't know our business.

Q. Has that system of shop committees existed as long as there were craft unions in that plant?

A. That is right.

882 Q. Can you tell us whether or not that system of shop committees is the general practice of craft unions?

A. It is practiced all over the country.

Q. Coming back to these polishers who testified on behalf of the complainant, Mr. Muehlhoffer, I refer you specifically to the following persons: Steve Dragosa, Alfred Meissner, Arthur Kruse, Joseph Macho, John Master, George Onda, Arthur Troyan, William Behrse, Mike Smith—

A. Wait a minute. What is this Mike Smith? I am not just sure whether he belongs to our organization or not.

Q. —and Howard Lowrance.

A. I recognize all the names but the Smith. We have a lot of Smiths. I don't know, but I imagine it is one of them.

Q. With the exception of Mr. Smith, will you tell us whether or not this rule that I previously read to you about activities by which the situation of employes, members of your union, might be placed in jeopardy, was invoked against these members?

A. That rule was invoked against all of those that you read off, all that I know.

Q. Reading from American Federation of Labor Union's Exhibit No. 1, which is the Rule Book you have identified, Mr. Muelhoffer, on Page 53 of that book appears

the following paragraph entitled Section 6, under the heading of Penalties: "Any member found guilty of any
883 practice, tending to disrupt the organization, or divulging any of its secrets to any but a member in good standing shall, upon conviction, be fined, suspended or expelled, as the local or International Executive Board may determine." Is it a fact or is it not, Mr. Muelhoffer, that this rule was invoked against the members of your union whose names I read to you a moment ago?

A. It was.

Q. Is there a certain procedure which your organization follows before invoking such a rule against your members?

A. Before we can invoke a rule of that kind, we must produce sufficient evidence. I want to say at this time that, if you look through that book, you will also find another rule which we have charged them with, which is secession. They were charged with this in front of the local body, part of them being present. At the time, sufficient written evidence and statements from other members was furnished to make the body of Local No. 3 think that they were justified in calling for a fine of this sort to be placed against these people. It was therefore with the evidence submitted to the International Executive Board in Cincinnati, who handed down the ruling in regard to the fine.

Q. Was it or was it not by reason of this action of your body, Mr. Muelhoffer, that these men were refused clearance cards?

A. It was.

884 Q. Then, will you tell us whether or not the Executives or the Management of the Electric Vacuum Cleaner Company had anything to do with the fact that these thirteen men, whose names I read, were refused clearance cards?

A. I don't think any of those thirteen would ever see the Management in regard to that, because they couldn't get in to work any place. The men just positively refused to work with them.

Q The management had nothing to do with their not receiving clearance cards?

A. They were not even notified of the fact.

Q. Do you know whether or not the Executives or management of the Electric Vacuum Cleaner Company had anything to do with the fact that anybody at that plant failed to receive a clearance card when the shop reopened on April 5, 1937?

A. I wouldn't know anything about that.

Q. Outside of your own organization, you wouldn't know anything about it?

A. That is right.

Q. I believe you took part, Mr. Muelhoffer, in some negotiations that were carried out for the 1937 contract—that is, the one that was signed a short time ago, between the unions and the company.

A. Yes.

Q. Was that agreement submitted to the company
885 before it was submitted to the members of your organization?

A. We started in negotiations with this agreement. We told them at the time that we would submit this to our members, that we would come back if it met with their approval, if they would be willing to sign it. We were told at that time that, if it met with the approval of our membership, that the majority of the workers, that they would be willing to go along and negotiate an agreement on that basis.

Q. Was the contract in the printed form, a copy of which is attached to the Respondent's answer, was that contract submitted to the Union for signature?

A. I imagine we were partly to blame for it being submitted in the form that it was. About four months ago, before the plant got operating the way it is, we got quite an argument in regard to the plant operating a forty-hour clause without a lay-off. There is always selfish people and they insisted that they should get forty hours and the other men lay off. I had to get the men together, shut the machines down and state that we would in no way break the agreement, that the company was forced to live up to it and we would therefore live up to it. I was told at that time, if I wanted to, I should read that clause off, that I

had not read that clause off at the last time I read the agreement. Knowing that I had, it naturally made me a little bit peeved, and I thought the next time I would make sure that they knew every clause that was
886 in there before the agreement was signed. That is the reason that was submitted.

Q. That is, in the printed form?

A. That's right.

Q. So your members have a contract themselves?

A. So they can't say we forced something down their throats they didn't want.

Q. Did all of your members sign such a contract?

A. That's right.

Q. How many members did you have in your organization at the time these contracts were signed?

A. In 1937, you mean?

Q. Yes, in 1937.

A. I imagine we must have had, just guessing, in the neighborhood of one hundred and seventy-five or one hundred and eighty.

Q. Approximately?

A. Somewhere around there.

Mr. Woodle: That is all.

Trial Examiner Ringer: Cross-examination.

Cross-examination

Q. (By Mr. Carey) You testified that, in a conference that you attended, with the management of the Electric Vacuum Cleaner Company, some smart remarks were passed by some one because Mr. Tuteur refused to deal with them.

887 A. Do I recall that?

Q. Do you recall the actual statements that were made at that time?

Q. Well, I recall one of them, because I would remember it any place. It sounds very out of place for any representative to say. It was said across the table: "Why, you old so-and-so! You are eating chicken and my men are eating skinned gravy off of that chicken." I don't blame the man for getting mad.

Q. Do you remember what Mr. Tuteur said in reply to that remark?

A. He said: "That is all. Everything is off."

Q. You said several members—now former members—of the Metal Polishers' Union were tried before your local union, is that right?

A. That is right.

Q. Were they found guilty?

A. They were.

Q. Were written charges placed against them?

A. They were.

Q. Was there a committee selected?

A. The Executive Board investigated the charges.

Q. Were these men called before the Executive Board?

A. They were told to come to the local, where all hearings are conducted.

888 Q. Was there an investigating committee?

A. The Executive Board is the investigating committee.

Q. Did they hold a hearing?

A. They held a hearing with all the written evidence and witnesses.

Q. Did they have the men there personally?

A. They were there at the hearing, all those that showed up there. We naturally don't subpoena them to show up.

Q. Were the others given notice?

A. How is that?

Q. Were they given written notice?

A. I imagine they were. I am not in a position to know that. That is not my job.

Q. Who is in a position to know?

A. The president of the organization.

Q. Who prepared the charges?

A. The committee from the Electric Vacuum Cleaner Company.

Q. When was the meeting of the local organization at which time the charges were heard?

A. I will have to go back and look up on the minutes. It was on a Friday night; that is all I can tell you know

about that.

Q. Do you know whether it was the Friday previous to April 5, 1937?

A. I imagine it was. We hold our meetings the
889 first and third Friday of each month, so you can figure out from there what date it was.

Q. Was it after the plant was opened or before?

A. They were told before the plant opened up that charges were brought against them. At that time, as I stated before, it was merely the refusal of the men to work with them. The charges were not at that time in force by the International is the reason I took no direct action. Today those men couldn't work in one of our shops.

Q. Do you know Mr. Lowrance?

A. I should.

Q. Is Mr. Lowrance a metal polisher?

A. Not a bit.

Q. Was he a member of your union?

A. A member of our organization.

Q. Was that contrary to your law?

A. It is, to a certain extent. He worked under the Plating Department. Under the conditions that men being put out there all the time, and under the ruling of the American Federation of Labor that Spot Welders go to the Department they were working in, they took these spot welders in.

Q. Although Mr. Lowrance is not a polisher, plater or buffer, he was a member of your union, is that true?

A. That is right.

Q. Your organization suspended him?

890 A. That is right.

Q. Did those men who were suspended receive written notice from your organization?

A. The biggest part of them received written notice from the International direct, after they protested and asked for a hearing.

Q. After they protested?

A. And asked for a hearing.

Q. Are you aware that your constitution provides that any person or persons who are members of the Interna-

tional Union and who issues or utters, or causes to be issued or uttered, any false or malicious reports, without first preferring charges against the accused to the Union having jurisdiction over the accused, that upon presentation of evidence of his or their guilt they shall be brought to trial, and if found guilty to be fined or expelled?

A. You want to know if I know that rule?

Q. Yes.

A. I helped make it. I should.

Q. So, under that rule, before a man is found guilty of the charges, going through the procedure of the organization of being notified, a committee being appointed, a committee investigating the reason charges were placed before the committee, the findings of the committee being reported to the local union, being acted upon by the local union,
891 and in the committee hearing, the persons accused must be called upon personally to give them an opportunity of giving testimony, that before that procedure is brought about, it is a violation of this law to accuse any member of the Metal Polishers Union of any—

A. Are you quoting that law or are you asking me something?

Trial Examiner Ringer: Let him finish his question, Mr. Muelhoffer.

Q. I quoted the procedure under which trials are held in your organization?

A. That is right.

Q. The procedure gives notice to a person being accused, does it not?

A. That is right.

Q. The procedure gives notice to a person being accused, is that right?

A. That is right.

Q. Was that constitution followed in the cases you had, Mr. Muelhoffer?

A. Our laws were followed strictly according to what is laid down in that book, in regard to these men that were expelled.

Q. If the laws weren't followed strictly, these men could remain as members of your union?

A. Not necessarily. Not as long as there is sufficient evidence to show their guilt.

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Q. Isn't a man considered not guilty until he is proven guilty?

A. That is right.

Q. These men—it is necessary to follow the rules of your organization before a man can be expelled?

Mr. Woodle: I object. I think the examination has gone far enough along these lines.

Trial Examiner Ringer: That would be a pure conclusion on his part, at least a matter of law. I will sustain the objection.

Q. At the meeting at which you testified five hundred people attended, at the time of the M. E. S. A. strike, were there in that meeting members of the M. E. S. A.?

A. Would I have any knowledge of exactly whether they were members of the M. E. S. A. or not?

Trial Examiner Ringer: Just answer the question, Mr. Muelhoffer.

A. I would say "No," after signing the application cards they did.

Q. After you sign an application in your organization, is it your understanding that they are no longer a member of any union that they may be affiliated with?

Mr. Woodle: I object to the question.

Trial Examiner Ringer: It would be immaterial

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what his opinion on that is.

Q. The strike in 1935 was called by the M. E. S. A. Union, is that true?

A. You stated it was, yes.

Trial Examiner Ringer: Just answer the question.

Q. Did you participate in settling that strike in 1935, Mr. Muelhoffer?

A. I did.

Q. Was the M. E. S. A. organization in existence at the time the strike was settled?

A. At the time the strike was settled?

Q. Yes.

A. I imagine it was, yes, sir. It is still in existence.

Q. Did the M. E. S. A. local participate in that strike,

participate in its settlement?

A. Did Local M. E. S. A. participate in the settlement, did you say?

Q. Yes.

A. I believe their committee was in when the final settlement was reached, yes.

Q. Were they members of the M. E. S. A.?

A. I imagine they were, yes.

Q. While the M. E. S. A. was conducting a strike, did the Metal Polishers work?

A. They did not.

894 Mr. Carey: That is all.

Trial Examiner Ringer: Anything further?

(No response.)

Trial Examiner Ringer: I would like to ask the witness a few questions.

Examination by Trial Examiner Ringer

Q. (By Trial Examiner Ringer) Now, there are five unions in the plant at the present time, is that correct?

A. Yes, sir.

Q. Five locals?

A. Yes, sir.

Q. And that includes everybody working in the plant from the lowest to the highest, that have non-executive positions, is that right?

A. Everything but the office, that is right.

Q. So everybody working there belongs to one or the other of these five unions?

A. At this time.

Q. Now, there are some men that don't fit in, literally at least, to some of these unions, isn't that right, Mr. Muelhoffer?

A. That is right.

Q. How are they taken care of, in assigning them to which particular union they will belong?

A. They have a Federal organization, as I ex-

895 plained before, that takes in the general run of workers, production workers and all that.

Q. The ordinary laborer, and whatever doesn't fit into

these particular four, would go into the—

A. Into this Federal organization.

Q. Into the Federal?

A. Yes.

Q. Then it is not a craft union, is it?

A. No, it is not exactly a craft. To be plain about it, it is an organization that takes whatever the crafts don't have the proper set-up to handle.

Q. Now, I am asking, for my own information: is that general in other plants, that whatever employes don't fit into the existing crafts in that institution, go into the Federal local?

A. Under an American Federation of Labor set-up, that is the way it is handled all over the country.

Q. That is the way it is handled?

A. Yes.

Q. So there would be some members in one plant belonging to the Federal local, who, in some other plant, would belong to a craft union?

A. No. I wouldn't exactly say that, unless they would be working at different types of work. Do you mean, if they change their type of work? If they do the same
896 work—the Apex and Premier would be a good example, that one Federal controls the two plants and that same type of work is naturally given to the Federal organization and, if they are a machinist it is given to the Machinists.

Q. At the time the plant closed down in March of 1937, and this arrangement was worked out to give the cards to permit employes to return, state whether there was an agreement at that time, as you understand it, with the company, that the American Federation of Labor unions would decide who was to go back to work.

A. The entire responsibility of who was to go back in was turned over to the A. F. of L. Union.

Q. And the business representatives then determined for the different unions who would return to work, is that correct?

A. Not necessarily. In the majority, it was the committees and the people working in the plant that deter-

mined it.

Q. Just how was the arrangement made on that as to who would assume that responsibility?

A. In so far as our organization is concerned, it was turned over to the committee. I was being advised of it at all times. The other organizations went on the strength that they would permit everyone who returned to work, that they would permit everyone to return to work who would apply for this card.

Q. Regardless of their union affiliations in the
897 past or anything else?

A. That is right. I think the only thing they had to do was to sign an application to the American Federation of Labor union.

Q. Was that agreed on that Saturday morning?

A. It was agreed that we would strictly live up to our agreement, that we had to enforce that from 1935 on, that was the major cause of the trouble, our agreement was that all the employes that came in since then must belong to our organization.

Q. I am referring particularly to who would get back to work the following week and what arrangements were actually made on Saturday morning between the representatives of the unions and the company in Mr. Spieth's office. Give me your best recollection of that.

A. To be honest about it, I didn't stay in the meeting during the whole meeting, because what was being discussed did not directly concern the Polishers, because we had already eliminated all those headaches during the past years, but the understanding I got from the set-up was that we were going to enforce that agreement. We had already gone on record on that, and that everybody going in Monday to work must obtain the proper clearance cards, and it was up to the different organizations to issue the clearance cards.

Q. That was the agreement, as you understand
898 it, with the company?

A. That is right.

Q. And as it actually worked out, in some of these craft unions, did they accept whoever applied for the

card?

A. As far as ours is concerned, we didn't.

Q. You didn't?

A. We refused some of them cards. We didn't refuse them, but the men just refused to have them come in the plant.

Q. Did you have a list of these certain men who were not to receive cards?

A. We had a list of certain men that were not to receive cards, and then as we went along, we obtained evidence against others. There is quite a few of those thirteen that are still out that, had they went in to work at the time they were called back to work, there would probably never have been any more said about, but they refused to come back to work, and the following week they came back, and by that time, charges had been piled up so high that they couldn't be overlooked.

Q. You didn't have a list Saturday or Monday of persons who were not going to be permitted to come back?

A. On Saturday we had a list, but it was not thirteen people at that time.

Q. How many were on that?

A. I imagine at that time there were about six or seven on that list.

899 Q. What particular ones, if you recall, were those six or seven?

A. I would have to go over to the office to just really get it. It was the men who were appointed officers of the C. I. O. organization.

Q. An then you added some more to that list during the following week, did you?

A. We added quite a few to the list, for the simple reason that we obtained sufficient evidence that they had went to our members' homes and intimated then and told them that the only way they could get back to work was to sign the C. I. O. card, that they would never work otherwise, and, if they knew what was good for them, they would sign. We had some of our members that the front of their houses were broken in and things like that.

Q. And you put those on the list?

A. That is right.

Q. When the persons came for cards, they were refused, is that right?

A. They were told to come down to the hearing meeting and stand hearing, and, if they were convicted, they would not come back to work.

Mr. Woodle: May I direct the Examiner's attention to the fact that, so far as the evidence goes, the members of the C. I. O. did not attempt to get back to work until
900 the following Monday, which was April 12, so there would be an intervening period of a week during which the investigation could have been carried out.

Mr. Lodish: That is true of the particular group, but each individual had a different story.

Q. (By Trial Examiner Ringer) With reference to objections by the Committee, did you pass certain of these tentatively to get in if their respective committees would OK them?

A. That is right.

Q. To how many of them did you do that?

A. I don't think I refused over one of two persons of the entire group a card, if the committee would OK it.

Q. And this committee—did you get in touch with them at all or had you talked with them about these particular persons, Mr. Muelhoffer?

A. I was in touch with the committee at all times, as far as that is concerned, and feeling out just exactly how the people in the plant worked and how they felt, and I was told that certain people, if certain people insisted on coming into that Department, that there would be open warfare in that Department, that's all.

Q. So you felt reasonably certain, when you sent these men over to the committee, you felt reasonably certain that the committee would not OK them?

A. No, I wouldn't say that.

901 Q. In some of them, you did?

A. To be honest with you, there were some of them I don't even know their names.

Q. In some of these cases, you were reasonably certain that their names would not be OK'd by the committee?

A. That is right.

Q. One of these men had been tried at that time, on Monday April 5?

A. On Monday April 5?

Q. Yes.

A. At that time I didn't refuse anybody entrance to that plant.

Q. I say they had not been tried before your locals at that time?

A. That is right.

Q. Had charges been filed against them at that time?

A. There had not been any charges preferred on the Monday that the plant opened.

Q. Not on any of these men whom you had listed as not being eligible to return, or whom you later put on that list — none of those had been charged with violations at that time, is that right?

A. Oh, yes, the officers of the organization, the charges were filed immediately and it was proven.

Q. When was that?

902 A. I wouldn't know that except from the papers. We got our information from that. But there was nobody refused a card to go into the plant on Monday that wanted to go to work.

Q. What I want to know right at this moment is whether or not any charges had actually been filed against any of these employes on account of secession or conduct detrimental to the local union—had charges been filed against them on or before April 5?

A. Now, I will have to answer that in a kind of indirect way. If their meeting of election of officers was held before April 5, there was charges filed against officers of their organization by our organization. If it was held after that, there was no charges filed by anyone. I couldn't tell you the dates, because I didn't pay enough attention to keep in touch with it.

Mr. Lodish: I think the record shows March 26.

The Witness: On March 26, there was charges against, I think, four or five people.

Mr. Lodish: It was either March 26 or before. It was

definitely before April 5.

Trial Examiner Ringer: That is all.

Mr. Carey: Mr. Examiner, one question.

Trial Examiner Ringer: Go ahead.

Recross-examination

Q. (By Mr. Carey) Are these men, elected to office
903 in the C. I. O. Union, blacklisted by your organization?

A. Blacklisted?

Q. Yes.

Mr. Spieth: I object.

A. We don't promote a black list.

Trial Examiner Ringer: It is answered then.

Q. Could they secure work in another shop for their workers, members of your union?

A. No, because they wouldn't have our card.

Mr. Carey: That is all.

Mr. Lodish: I have a question, Mr. Examiner. I think there is still a bit of confusion.

Trial Examiner Ringer: Go ahead.

Recross-examination

Q. (By Mr. Lodish) Who is Warren McGee? Who does he represent?

A. The Machinists.

Q. The Complaint calls the five unions this: Polishers, Machinists, Moulders, Pattern Makers and Federal Labor Union. Now, are those the five, as far as you remember?

A. Yes.

Q. In this notice of March 31, there are signatures by yourself, the Polishers; then Ralph Gordon, Machinists; then Warren McGee, Machinists; then Federal Union, Pattern Makers and Operating Engineers. There is no
904 Moulders, but there is Operating Engineers.

A. That is one organization that was left out.

Q. So there are really six?

A. Really six organizations if you count that.

Q. The Operating Engineers, I presume, are just a handfull of members?

A. I think there is only two.

Q. Just two?

A. Yes.

Mr. Lodish: That is all.

Trial Examiner Ringer: Any further questions?

Redirect Examination

Q. (By Mr. Spieth) The company had nothing to do with the preparation of any list, or knew nothing of any list of employees that were not to go back to work?

A. None at all.

Q. And, if I understood you correctly, the arrangement with the company in regard to issuing clearance cards was that all employees were to get cards, but those that came under the classification of new employees would be required to join the union?

A. That is right.

Q. So that an old employee, to get a clearance card, was not required to join a union?

A. As I stated before, the only opposition to that
905 was ours in certain cases, was Local No. 3's in certain cases. We always upheld our closed condition in that shop.

Q. You had a one hundred per cent union in that shop, is that right?

A. Yes.

Mr. Spieth: That is all.

Examination by Trial Examiner Ringer

Q. (By Trial Examiner Ringer) At the discussion in Mr. Spieth's office on Saturday April 3, there was not anything said whatever, that you heard, about certain employes would not be permitted to go back?

A. Not while I was at the meeting.

Trial Examiner Ringer: That is all.

Redirect Examination

Q. (By Mr. Orgill) On Monday, if I understood you, that is the date the plant opened, you didn't refuse cards to anybody that came and asked for them?

A. None at all.

Q. It was at some later time that this list was made up, concerning which you have testified?

A. The men on the list didn't ask us for cards on a Monday and the list was made up afterwards through evidence that was brought in by people that went back into the plant and went to work. The only ones that the list was made up on was the officers that were appointed,
906 which it states clearly in our rules that you can't belong to two organizations.

Mr. Orgill: That is all.

Trial Examiner Ringer: Next witness.

(Discussion off the record.)

Mr. Lodish: Mr. Examiner, there has just been a discussion regarding the cards and contracts produced at this hearing by the American Federation of Labor unions. The record shows, in a number of places, that they claim to have a certain number of cards as of June and July, 1935, a certain number of cards as of June and July, 1936, and contracts as of May 20, 1937. Now, my attitude and reaction in this matter is this: I believe that there would be no useful purpose in introducing the thirty-five hundred cards. I think the evidence shows that they had the number of cards they say they had at that time. They are present here. They can be inspected, and I think it would be satisfactory with us if there is merely read into the record the numbers in the separate crafts, and the reason I say that is because the pleadings show six hundred of eight hundred total American Federation of Labor, but there is nothing in the case thus far that segregates them. If those numbers are read in as to 1935 and 1936, I think that would be entirely satisfactory. Now, as to May, 1937, I can't see how there can possibly be any dispute as to whether the American Federation of Labor have a majority at that date. It was quite obvious that
907 everybody in the plant should be a member, because that is the condition on which they were allowed to get in; so there is no point in introducing those cards or contracts, except this: there are a group of several hundred cards introduced by the C. I. O. in confidence. They

purport to be signed by employees of the Electric Vacuum Cleaner Company. It would be helpful to the Board to have one set put in evidence, whether it be the 1935 cards, the 1936 cards, the 1937 cards or contracts, so that they may have some way of comparing these cards and contracts as to signature, rather than by working entirely in the dark.

Trial Examiner Ringer: As to that, the 1937 would be more likely to contain substantially the same names as are in the cards admitted by the C. I. O.

Mr. Lodish: Yes, plus a good many more.

Trial Examiner Ringer: Yes.

Mr. Lodish: So that we are willing to stipulate that the cards are here, they are subject to inspection, and just having the totals read in, and the individual contracts submitted, with the understanding that they will be eventually returned by the Board to the unions.

Mr. Woodle: In response to Mr. Lodish's suggestion, we will offer in evidence, as one of our exhibits, a sample card—not a blank card, but one which has been taken at random from the 1935 application and membership
908 cards, together with a stipulation agreed to by Mr. Lodish on behalf of the Board, that this card, in its form, is a sample of all of the other cards, which we might otherwise introduce in evidence, but regard as unnecessary and impractical at this time. We will also introduce in evidence, for the Board, all of the signed contracts, which we have here, and which are the 1937 contracts that have been referred to in evidence. We believe that they will supply the Board with a sample of the cards which have been signed by the members of the American Federation of Labor Affiliated Unions, together with the information that has been requested regarding the number of members belonging to each of the unions in 1935 and 1936, and the signatures appearing on the 1937 contracts, which will enable the Board, if it so desires, to compare them with the signatures on the cards offered by the Complainant.

Trial Examiner Ringer: Now, those will be marked as exhibits, will they?

Mr. Woodle: Yes, sir. Mr. Lodish, there is one thing

that I want to add to that: Our stipulation includes the fact that the 1935 card is the same as the 1936 card, and the 1937 card; the same form was used each year. Will you mark this card, then, American Federation of Labor union's Exhibit No. 2?

(The card referred to was received in evidence and marked for identification as A. F. of L. Exhibit No. 2.)

909 Mr. Woodle: I now offer American Federation of Labor Exhibit No. 2 in evidence.

Trial Examiner Ringer: Admitted.

(The card referred to was received in evidence and marked American Federation of Labor Exhibit No. 2.)

Mr. Orgill: As I understand—

Trial Examiner Ringer: American Federation of Labor Exhibit No. 2 has been identified and admitted. Now, I understand the contract will be American Federation of Labor Exhibit No. 3.

Mr. Woodle: Yes. I would like to read in to the record first the list of the 1935 memberships, according to the craft and the number of each. I have them separated.

Trial Examiner Ringer: In accordance with the stipulation, you may do that.

Mr. Woodle: I don't believe I have gone through the formality of offering American Federation of Labor Exhibit No. 1 in evidence. I now do so.

Trial Examiner Ringer: And I will admit American Federation of Labor Exhibit No. 1.

(The papers referred to were received in evidence and marked "A.F. of L. Exhibit No. 1, Witness Muehlhoffer.")

Mr. Woodle: Now, reading into the record the card membership of the following crafts in 1935: Metal Polishers, Buffers, Platers and Helpers International Union,

910 Local No. 3, ninety members.

Trial Examiner Ringer: What year is that now?

Mr. Woodle: 1935.

Mr. Carey: What month?

Mr. Woodle: As of June 22, 1935.

Trial Examiner Ringer: Ninety?

Mr. Woodle: Ninety. International Association of Machinists, District 54—two hundred and two. International Moulders Union of North America, No. 430—twenty-one. Pattern Makers of Cleveland and Vicinity, two. Federal Labor Union, No. 18907, two hundred and ninety-three. Firemen and Engineers, two.

Mr. Lodish: What is that total, then?

Mr. Woodle: Six hundred and ten. Now, 1936: As of June 22, 1936, the following is the American Federation of Labor membership of its affiliated unions, as shown by membership cards in each craft: Metal Polishers, Buffers, Platers and Helpers, International Union No. 3, one hundred and fifty-five. International Association of Machinists, District No. 54, two hundred and seventy-six. International Moulders Union of North America, No. 430—eleven. Pattern Makers Union of Cleveland and Vicinity, two. Federal Labor Union No. 18907, three hundred and twenty-seven.

Mr. Lodish: Are the Engineers the same?

Mr. Woodle: Engineers and firemen still have two.

911 (Discussion off the record.)

Mr. Woodle: Mark these for identification as American Federation of Labor Exhibit No. 3.

(American Federation of Labor Exhibit No. 3, marked for identification, as requested.)

Mr. Woodle: By stipulation of counsel, we offer in evidence American Federation of Labor union's Exhibit No. 3, which are made up of nine hundred and sixty-four separate signed contracts, which are divided as follows: One hundred and seventy-four contracts signed by members of the Polishers Union—

Mr. Orgill: Now, just a moment. They are not separate contracts. They are approval of a contract arrived at through collective bargaining.

Mr. Woodle: The legal effect, of course. I was not intending—

Mr. Orgill: In legal effect, it is the adoption of a contract through collective bargaining by that number of people, is it not?

Mr. Woodle: That is true.

Mr. Lodish: We won't hold the description against anybody.

Mr. Woodle: The description is not intended to be binding as to any legal effect of the contract.

Mr. Lodish: Would the description be the nine
912 hundred and what?

Mr. Woodle: Nine hundred and sixty-four.

Mr. Lodish: Nine hundred and sixty-four documents, all being printed copies of the contract between the American Federation of Labor and the Company, and each individual one signed by an employee, showing his approval.

Mr. Orgill: Showing his adoption of the contract arrived at through collective bargaining.

Mr. Lodish: All right.

Trial Examiner Ringer: A preliminary to the master contract later signed.

Mr. Orgill: That is right.

Mr. Lodish: Not later signed, because some of these are dated later.

Trial Examiner Ringer: Signed on May 20.

Mr. Woodle: Signed on May 20, 1937. Do you want to continue that?

Mr. Lodish: No, that is all right.

Mr. Woodle: That is all that is necessary?

Mr. Lodish: Yes.

Mr. Woodle: For the convenience of the Board, I was offering the numbers of the contracts signed by the various unions. One hundred and twenty-four of them were signed by members of the Polishers' Union. Four hundred and sixty-one by members of the Federal Labor Union.
913 Three hundred and sixteen by members of the Machinists' Union. Eleven by members of the Moulders Union, and two by members of the Pattern Makers Union.

(Discussion off the record.)

Mr. Lodish: If that is all, Mr. Examiner, I have a further statement to make in the record. I have stated be-

fore in the record that I would present Mr. Spieth with a list of names to serve as the basis for a further ancillary proceeding if any. That list is not yet available. It was last traced to the possession of Mr. Pascoe, and we have in our possession a telegram received from Lima advising us that Mr. Pascoe can not be reached. I presume he is traveling from one city to another, and just as soon as we get that list, we will give Mr. Spieth a copy in accordance with the statements heretofore made. I am sorry that we can't apparently get it before this hearing is over, but I presume there will be no particular harm done in getting it a day late. We have got to get Mr. Pascoe first.

Trial Examiner Ringer: That is satisfactory to you, is it, Mr. Spieth, assuming that you get it?

Mr. Spieth: Yes, if I get it promptly, and with the understanding that Mr. Lodish will check that to see that it is the list that was filed with the Board prior to the time of this complaint.

914 Trial Examiner Ringer: Is there anything further now that anyone wishes to add as evidence in this case?

Mr. Woodle: I now offer in evidence American Federation of Labor Exhibit No. 3.

Trial Examiner Ringer: Admitted. Said American Federation of Labor Exhibit No. 3 to be held in the custody of the Board by its agent, the Trial Examiner.

Mr. Spieth: If your honor please, I think the "C" case was left with the understanding that, if I wanted to introduce some further evidence, I might. I have heard the evidence in the "R" case. A considerable portion of it is pertinent in the "C" case, and it is at least cumulative of the matters introduced in the "C" case. There are some matters, of course, relating to the interunion activities and things of that kind that have no particular bearing on the "C" case but I can't see that they are prejudicial. As long as there matters have been heard together, it would be my suggestion that we be permitted to consider the evidence in the "R" case as part of the "C" case, with the exception of such as may relate to the interunion activities, union rules and matters of that kind.

Trial Examiner Ringer: Is it agreeable to all parties that the evidence in the "R" case be considered as evidence in the "C" case, in so far as it is relevant thereto?

Mr. Lodish: Agreeable.

Mr. Woodle: It is agreeable to us.

915 Trial Examiner Ringer: Now, the only thing remaining then—

Mr. Spieth: Well, I will rest my case, if I may interrupt, then.

Trial Examiner Ringer: You are resting now?

Mr. Spieth: I would like to renew the motion now that I made at the conclusion of the Respondent's case in the "C" case.

Trial Examiner Ringer: Let it be shown as overruled.

Mr. Woodle: The American Federation of Labor unions also rest their case, and at this time would like to make a motion, which of course was not proper on our behalf before, that the complaint be dismissed, as to the "R" case.

Trial Examiner Ringer: That will be overruled also.

Mr. Lodish: At this time, Mr. Examiner, I would like to move that the amended complaint be amended to conform to the evidence in the case. I believe there have been some immaterial variations betwen the amended complaint and the evidence, such as perhaps stating a certain date wrong, or a number five hundred and fifty, where the number may have been more or less, and I would like to move, generally, that the amended complaint be made to conform to the evidence in the case.

Trial Examiner Ringer: No objection to that?

Mr. Spieth: Well, will there be an amended com-

916 plaint filed, then?

Mr. Lodish: No. That is just a general motion that the complaint be made to conform to the evidence, wherever there has been a variation that has not been a surprise to anybody or anything material of which I know of no such instance. It is just a general motion.

Trial Examiner Ringer: I don't know of anything that has varied in a substantial way. Of course, that wouldn't bind anybody as to what my thought on that would be.

Mr. Spieth: I don't know of anything, but of course we are saving our objections on this list that is to be furnished in so far as it may have any part in the "C" case. I don't want to be put in the position, by reason of Mr. Lodish's motion, of not having filed an answer that would meet any issues that might come up by reason of this omnibus motion with relation to an amended complaint, and personally, I don't see any reason for a motion of that type.

Trial Examiner Ringer: It may be that Mr. Lodish may be willing to amend his motion.

Mr. Lodish: My motion is merely to make the amended complaint conform to the evidence.

(Discussion off the record.)

Trial Examiner Ringer: I think, for the safety of all concerned, I believe I will sustain that motion. I don't see how it can hurt anybody. I will sustain that motion
917 to amend the complaint to agree with the evidence submitted in this case.

Mr. Lodish: All right.

Mr. Spieth: I have taken exception to the motion.

Mr. Lodish: I think you should.

Mr. Spieth: Because I don't think it is proper. I mean I except to the ruling and object to the granting of the motion. I don't think it is proper. If it is intended to reach merely irregularities such as questions of date, and so forth, the Examiner is perfectly competent to take care of such matters, and I don't think, if Mr. Lodish said the twenty-second, when it should be the twenty-third, that the case would be decided against him on that account.

Trial Examiner Ringer: As to the oral arguments or briefs: In this case, I would be very glad to have briefs submitted, and, although I have not heard Mr. Lodish's expression on the matter, it seems that at least all the other counsel prefer that. Of course, it means additional work for everybody, except me perhaps.

(Discussion off the record.)

Trial Examiner Ringer: Now, the question of the reasonable time, under the circumstances here: I think that the Regional Attorney should be given an opportunity to

file a brief until a week from today. Is that long enough?

Mr. Lodish: Are you addressing everybody?

918 Trial Examiner Ringer: No. I am referring to you.

Mr. Lodish: Oh, I am sorry. Yes, that is all right.

Trial Examiner Ringer: And that briefs by the respective other counsel, or brief, be filed within one week thereafter, and that the Regional Attorney, if he desires, may file an answer brief within four days thereafter.

Mr. Lodish: Of course, these briefs refer to the "C" case, and that various counsel can file briefs that refer to the "R" case if they so desire.

Trial Examiner Ringer: I think it can include both, as far as that is concerned, if they so desire.

(Discussion off the record.)

Trial Examiner Ringer: My attention has been called to the fact that a copy was to have been made of the Charter, identified as Board's Exhibit No. 23, said copy to be offered in evidence. Has a copy of that charter been prepared?

Mr. Carey: Not yet. We will have a photostatic copy prepared and turned over to the Reporter. Is that what is desired—a photostatic copy?

Mr. Spieth: That is all right.

Mr. Orgill: I believe a photostatic copy would be preferable.

(Discussion off the record.)

Trial Examiner Ringer: You are instructed to have a photostatic copy made of the charter, identified as

919 Board's Exhibit No. 23.

Mr. Carey: We will do so.

Mr. Lodish: I now offer in evidence Board's Exhibit No. 23.

Trial Examiner Ringer: Admitted.

(The charter referred to was received in evidence and marked "Board's Exhibit No. 23. Witness Carey.")

Trial Examiner Ringer: The hearing is concluded.

(Whereupon, at 4:00 o'clock p. m., June 18, 1937, the hearing in the above-entitled matter was closed.)

In the
UNITED STATES CIRCUIT COURT OF APPEALS
For the Sixth Circuit

National Labor Relations Board,
Petitioner,
v.
Electric Vacuum Cleaner Company, Inc.,
Respondent.
No. 8748

STIPULATION

It Is Hereby Stipulated And Agreed by and between the attorneys for the above named parties that Board Exhibits Nos. 12, 13 and 14 designated by respondents under date of September 23, 1940, to be included in the printed record, need not be printed.

It Is Further Stipulated And Agreed that those exhibits not printed shall be deemed part of the record before the Court and may be considered by the Court and referred to by the parties; and that either party shall have the right to have any of said exhibits printed and included in the printed record in the event that appeal as later taken.

Dated at Washington, D. C.,
this 4 day of October, 1940.

Robert B. Watts,
Associate General Counsel
National Labor Relations Board

Spieth, Taggart, Spring & Annat,
Counsel for respondent.

Dated at Cleveland, Ohio,
this 7th day of October, 1940.

ORDER

(Entered October 17, 1940)

Before: Hicks, Simons and Allen, JJ.

It is ordered that the stipulations to dispense with printing Board's Exhibits Nos. 12, 13 and 14 be and the same is approved.

Approved for Entry:

Xen Hicks,
Circuit Judge.

BOARD'S EXHIBIT No. 6

AGREEMENT

This Agreement made and entered into at East Cleveland, Ohio, on this 22nd day of June, 1935, by and between the Electric Vacuum Cleaner Company, hereinafter known as the Employer, and the below-named Local or Federal Unions affiliated with the American Federation of Labor,

Metal Polishers International Union Local #3
International Association of Machinists Dist. #54
International Molders Union of North America Local #430
Pattern Makers Association Cleveland and Vicinity, Federal Labor Union #18907

which Local or Federal Unions the Employer recognizes as the duly chosen agents for collective bargaining for its employees during the term of this agreement provided that said Unions represent the majority of said Employees.

Article I

(a) Five (5) consecutive days of eight (8) hours each, exclusive of a thirty (30) minute lunch period: Monday, Tuesday, Wednesday, Thursday, and Friday, shall constitute a week's work.

Board's Exhibit No. 6

(b) Overtime shall not be worked except in cases of emergency, maintenance, and repair work which cannot be performed during the regular daily schedule of hours.

(c) Work performed on Saturdays and the first four (4) hours of overtime in any one day shall be paid for at the rate of time and one-half, and overtime in excess of four (4) hours in any one day shall be paid for at the rate of double time; provided however, that all work performed, except by Firemen and Watchmen, on Sundays, New Years Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, or Christmas Day shall be paid for at the rate of double time, irrespective of the number of hours worked. When any of the above holidays fall on Sunday, the day observed by the State or Nation shall be considered the holiday.

(d) When it becomes necessary for Employees to work overtime, they shall not be laid off during regular working hours to equalize the time.

Article II

When Employees report for work at the regular starting time and are prevented from performing services that day by conditions beyond their control, such Employees shall be paid for actual time held with a minimum of three (3) hours, unless these Employees have been notified at their homes before the time they would normally leave for work.

Article III

(a) When it becomes necessary to reduce expenses or reduce production in any department, the hours worked in such department shall be reduced to thirty-two (32) hours per week before the force is reduced.

(b) Hours of work in any department shall not be reduced below thirty-two (32) hours per week except by mutual consent of the Employees and the Management.

(c) The Employer agrees not to discriminate against any Employee because of his or her services as Shop Steward or Committee member.

Board's Exhibit No. 6

(d) Seniority rights shall be forfeited after an absence of one (1) year, or if an Employee quits of his or her own accord, or is discharged for just cause, or refuses to return to work when called.

(e) A seniority list of Employees by Crafts shall be furnished the Business Representatives.

Article IV

(a) Any Employee who believes that he or she has been unjustly treated shall complain to his or her Committeeman who shall take the complaint directly to the foreman involved. Failing in satisfactory adjustment with the foreman, the Committee member shall take the matter up directly with the proper Union officials for adjustment.

(b) No grievances shall be carried to the point where cessation of work takes place, either on voluntary act of the Employees or by order of the Company, but any dispute over matters not covered by this contract, or disputes over interpretation of this contract shall be carried through to conciliation by the parties involved.

Article V

(a) Piece-work rates once established, will not be reduced except when the material or design is changed or improved tools, machinery, or other facilities are installed by the Company, thus expediting the work. Then rates will be re-established which will enable the Employee to earn a rate at least equal to his rate of piece work before such change was made by the Company. In cases where the workman introduces new methods or devices for expediting the work, the rate per unit shall not be reduced.

(b) When a piece-worker has finished a job that requires less than a day to perform, his or her earnings therefrom shall be recognized as his or her property and no part thereof shall be used to build up his earnings on another job.

Board's Exhibit No. 6

Article VI

This Agreement shall be effective as of June 24th, 1935, and continue until June 23rd, 1936.

Dated at East Cleveland, Ohio, June 22nd, 1935.

Representing and Signing for the Employer:

R. B. Wilson, Exec. Vice Pres.

Representing and Signing for Each Local:

Ray Muehlhoffer,
Metal Polishers International Union #3.

Ralph G. Gordon,
International Association of Machinists Dist. 54.

Geo. W. Haas,
International Molders Union of North America Local #430.

Yaro Jun
Pattern Makers Association.

Federal Labor Union #18907.

STBAU
#19366

BOARD'S EXHIBIT No. 7

AGREEMENT

This Agreement made and entered into at East Cleveland, Ohio, on this 6th day of July, 1936, by and between the Electric Vacuum Cleaner Co., Inc., hereinafter known as the Employer, and the below-named Local or Federal Unions affiliated with the American Federation of Labor:

Metal Polishers' International Union, Local #3
International Association of Machinists, District #54
International Molders Union of North America, Local #430
Pattern Makers Association of Cleveland and Vicinity
Federal Labor Union #18907

Which local or Federal Unions the Employer recognize as the duly-chosen agents for collective bargaining for its Employees during the term of said Agreement, provided that said Unions represent the majority of said Employees.

Article I

(a) Five (5) consecutive days of eight (8) hours each, exclusive of a thirty (30) minute lunch period: Monday, Tuesday, Wednesday, Thursday and Friday, shall constitute a week's work.

(b) Overtime shall not be worked except in cases of emergency, maintenance, and repair work which cannot be performed during the regular schedule of hours.

(c) Work performed on Saturdays and the first four (4) hours of overtime in any one day shall be paid for at the of time and one-half, and overtime in excess of four (4) hours in any one day shall be paid for at the rate of double time; provided however, that all work performed, except by Fireman and Watchmen, on Sundays, New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, or Christmas Day shall be paid for at the rate of double time, irrespective of the number of hours worked. When any of the above holidays fall on Sunday, the day observed by the State or Nation shall be considered the holiday.

Board's Exhibit No. 7

(d) When it becomes necessary for Employees to work overtime, they shall not be laid off during regular working hours to equalize the time.

Article II

When Employees report for work at the regular starting time and are prevented from performing services that day by conditions beyond their control, such Employees shall be paid for actual time held with a minimum of three (3) hours, unless these Employees have been notified at their homes before the time they would normally leave for work.

Article III

(a) When it becomes necessary to reduce expenses or reduce production in any department, the hours worked in such department shall be reduced to thirty-two (32) hours per week before the force is reduced.

(b) Hours of work in any department shall not be reduced below thirty-two (32) hours per week except by mutual consent of the Employees and the Management.

(c) The Employer agrees not to discriminate against any Employee because of his or her services as Shop Steward or Committee member.

(d) Seniority rights shall be forfeited after an absence of one (1) year, or if an Employee quits of his or her own accord, or is discharged for just cause, or refuses to return to work when called.

(e) A Seniority list of Employees by Crafts shall be furnished the Business Representatives.

(f) When hiring new help no one who is related to a foreman shall be assigned to duty under such foreman.

Article IV

(a) Any Employee who believes that he or she has been unjustly treated shall complain to his or her Comitteeman who shall take the complaint directly to the foreman involved; failing in satisfactory adjustment with the foreman, the Committee member shall take the matter up directly with the proper union officials for adjustment.

(b) No grievances shall be carried to the point where cessation of work takes place, either on voluntary act of the

Board's Exhibit No. 7

Employees or by order of the Company, but any dispute over matters not covered by this contract, or disputes over the interpretation of this contract shall be carried through to conciliation by the parties involved.

Article V

(a) Piece-work rates once established will not be reduced except when the material or design is changed or improved tools, machinery, or other facilities are installed by the Company, thus expediting the work. Then rates will be re-established which will enable the Employee to earn a rate at least equal to his rate of piece work before such such change was made by the Company. In cases where the workman introduces new methods or devices for expediting the work, the rate per unit shall not be reduced.

(b) When a piece worker has finished a job that requires less than a day to perform, his or her earnings therefrom shall be recognized as his or her property and no part thereof shall be used to build up his or her earnings on another job.

This Agreement shall be effective as of June 24, 1936, and continue until June 23, 1937.

Dated at East Cleveland, Ohio, July 6, 1936.

Representing and Signing for the Employer:

R. B. Wilson,
Executive Vice President.

Representing and Signing for Each Local:

Ray Muehlhoffer,
Metal Polishers International Union #3.

Chas. L. Milz,
International Associations of Machinists, District #54.

Geo. W. Haas,
International Molders Union of North America #430.

C. D. Madigan,
Pattern Makers Association of Cleveland and Vicinity.

Edward J. Whitely,
Federal Labor Union #18907.

BOARD'S EXHIBIT No. 8

To the Employees of Electric Vacuum Cleaner Company, Inc.:

On July 6, 1936, at your request, the company entered into a contract which, among other things, provided that we recognize International Association of Machinists, District No. 54, Metal Polishers' International Union No. 3, International Molders' Union of North America No. 430, Pattern Makers' Association of Cleveland and Vicinity, and Federal Labor Union No. 18907, Craft Organizations affiliated with the American Federation of Labor, as your duly chosen agents for collective bargaining, and thereafter, until June 23, 1937, it was agreed that we employ only persons affiliated with said crafts.

The membership cards signed by you authorize your Craft Organizations to represent you for a period of one year and thereafter, subject to thirty days' written notice of your desire to withdraw such authority.

The company has at all time been willing to carry out that contract; and, after conferences with your agents, is, at their request, resuming operations

MONDAY MORNING, APRIL 5, 1937

but only those employees who are members of the crafts under contract with us will be employed.

(Signed) Electric Vacuum Cleaner Company, Inc.
By Julius Tuteur, President

April 3, 1937.

BOARD'S EXHIBIT No. 9

Board's Exhibit No. 9 is identical with the exhibit annexed to Respondent's Answer, and is a form of contract between respondent and the following named labor organizations, affiliated with the American Federation of Labor, to-wit:

Metal Polishers' International Union, Local No. 3,
International Association of Machinists, District No. 54,
International Molders Union of North America, Local No. 430,
Pattern Makers Association of Cleveland and Vicinity, Federal Labor Union No. 18907.

BOARD'S EXHIBIT No. 10

Board's Exhibit No. 10 is identical with the exhibit annexed to Respondent's Answer, except that the signatures of the parties to the contract are filled in, and is dated May 20, 1937.

BOARD'S EXHIBIT No. 11

Cleveland, Ohio, April 2, 1937.

Electric Vacuum Cleaner Company
1734 Ivanhoe Road,
Cleveland, Ohio.

Gentlemen:

Whereas a majority of the employees of the Electric Vacuum Cleaner Company have resigned their memberships from the various Local or Federal Unions with which you entered into an agreement on the 6th day of July, 1936, and have affiliated themselves with Local #720 of the United Electrical and Radio Workers of America, therefore, please be advised that the American Federation of Labor does not represent the employees affiliated with Local #720 of the United Electrical and Radio Workers of America and cannot, thereby, speak for said Local #720 of the United Electrical and Radio Workers of America as to a settlement of the grievances arising under the existing contract which closed the Electric Vacuum Cleaner Company plant on the 19th day of March, 1937.

Furthermore, upon a motion duly authorized and passed the members of Local #720 of the Union Electrical and Radio Workers of America recognize the existing contract and are ready and willing to return to work immediately under said contract, but any grievances which effect the members of Local #720 of the United Electrical and Radio Workers of America arising from said contract shall be negotiated with the representatives of said Local, and pursuant to this motion, the undersigned were elected as a committee, authorized to negotiate an immediate settlement of any and all grievances arising from said existing contract to the effect that the Electric Vacuum Company plant may be speedily opened.

Respectfully yours,

Local #720,
United Electrical and Radio Workers of Am.,
(Sgd.) Edward Koutnik,
" Frank Erzen,
" Clara Petkash,
" Joseph Washko,
" William Behrse.

Board's Exhibit No. 11

FACTORY PAYROLL NUMBER BY DEPARTMENTS

Timekeepers	Nos. 1 to 10
Restaurant	13 to 15
Shipping Department	17 to 20
Maintenance Department	23 to 50
Stores	67 to 82
Toolroom	85 to 120
Service Department	150 to 200
Assembly Department	201 to 300
Polishing and Buffing	401 to 600
Plating Department	601 to 700
Machine Shop	701 to 899 and 2000 up
Motor Department	901 to 1099
Packing Department	1201 to 1300
Ballbearing Department	1301 to 1400
Inspection	1401 to 1500
Foundry	1501 to 1600
Die Casting Department	1701 to 1800
Multigraph	1801 to 1900
Grinding Department	1901 to 1920

BOARD'S EXHIBIT No. 15

To The Employees Of The

ELECTRIC VACUUM
CLEANER CO., Inc.

As a result of the following notice received by us today, our plant

WILL BE CLOSED

Monday, March 22, 1937

Signed
Electric Vacuum Cleaner Co., Inc.
Per Julius Tuteur, Pres.

March 20, 1937.

To The Electric Vacuum Cleaner Co., Inc.

Gentlemen—

As the bargaining agent for your employees, we request you to temporarily close your plant, pending present negotiations with you relative to matters covered by our contract with you.

Very Truly Yours,

Thos. A. Lenahan,
Sec. Cleveland Federation of Labor.

Committee:
R. G. Gordon, Machinists.
George A. McKinnon, Metal Trades Council Sec.
Frank P. Converse,
Local 589 Int. Union of Operating Engineers.
John Toth, Jr., Int. Association of Machinists.
Ray Muehlhoffer, Metal Polishers Local No. 3.
Frank Ledasil, Federal Labor Union 18907.
W. C. Magee, Int. Association of Machinists.

BOARD'S EXHIBIT No. 19

"The Place To Live"
THE CITY OF EAST CLEVELAND
State of Ohio

March 19th, 1937.

I hereby authorize Chief of Police Corlett to act with the Electric Vacuum Company. We agree to go back to work with the re-instating of the two men discharged yesterday, with the understanding that the employees shall have the right to join any Union of their own free will.

Under these terms we agree to go back to work peacefully.

Walter E. Scott,
District Organizer of U. E. & R. of A.

Duplicate for National Office

United Electrical and Radio Workers of America

Local ..... No. .....

Name .....

Address .....

City ..... Date .....

Place of employment .....

Employed as .....

Book No. .....

APPLICATION FOR MEMBERSHIP

The undersigned hereby authorizes and requests the

UNITED ELECTRICAL AND RADIO WORKERS OF AMERICA

Affiliated with the C.I.O. National Office: 1133 Broadway, N. Y. City

through its officers, to represent me for the purpose of collective bargaining in regards to wages, hours and working conditions for a period of one year.

Employed by ..... Dept. .....
(Name of Company)

Occupation ..... Name .....
If not working, check (Sign name clearly)

Date ..... Address .....

Male ..... Female ..... City .....
(Union Label) (State)

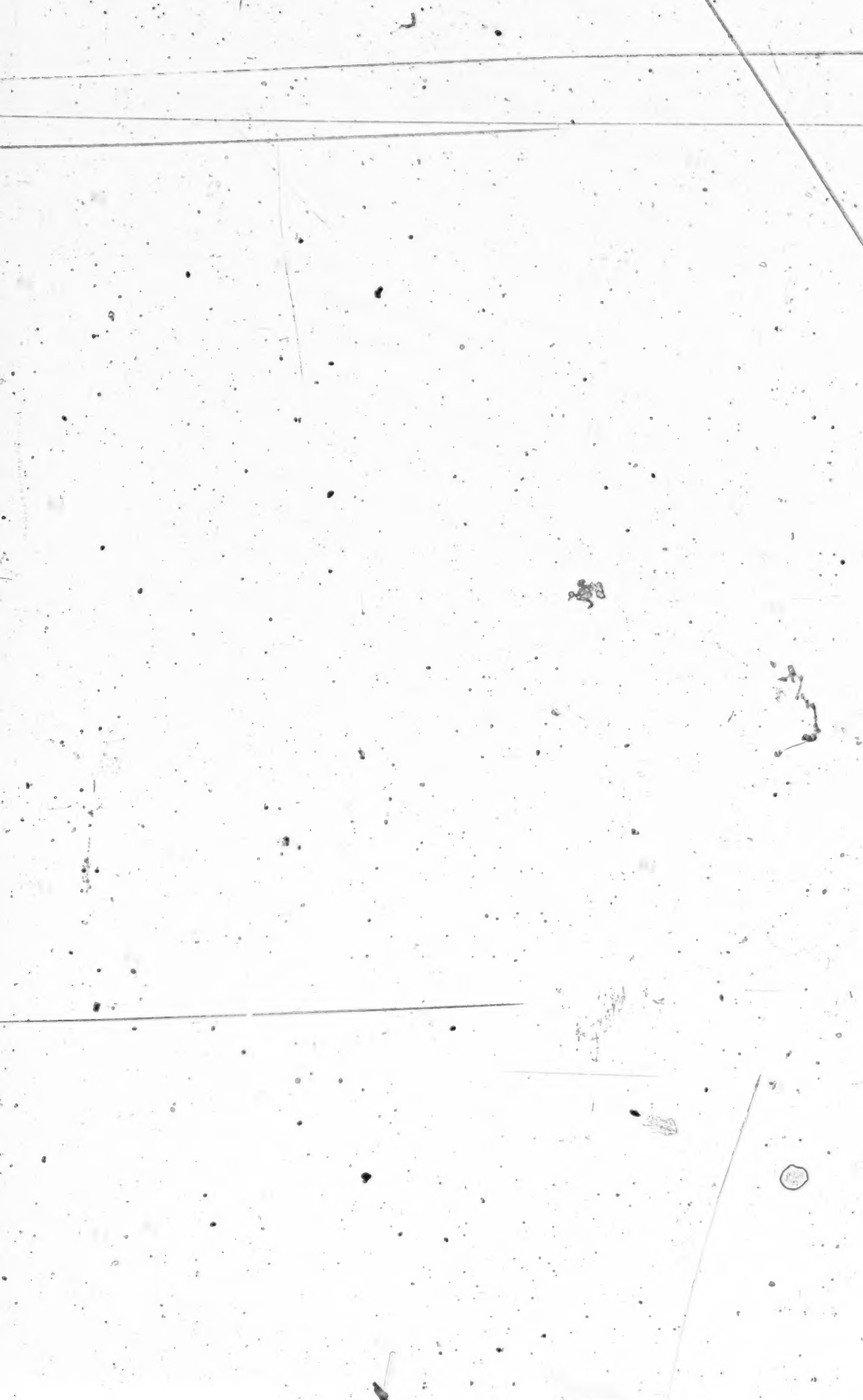
Received $ .....

Name .....

By .....

BOARD'S EXHIBIT No. 20
United Electrical and Radio Workers of America

858



CASE NO. 2-C-675
EXHIBIT NO. 22
IN THE MATTER OF Shaw Vacc.
DATE 6/10/37 WITNESS Casey
WHITE & BULGER, OFFICIAL REPORTERS

United Electrical and Radio Workers of America

UNITED ELECTRICAL & RADIO WORKERS of AMERICA

Know All Men By These Presents, that, acting under the authority vested in us by the laws of the above named organization, we, the undersigned, do hereby grant this **CHARTER** to a body who are hereinafter to be known and designated as **Local 720**

It is hereby agreed in the acceptance of this Charter that the aforesaid Union shall conform to the Constitution, Rules and Regulations of the United Electrical and Radio Workers of America.

In consideration of the due and faithful performance of the foregoing stipulations, the United Electrical and Radio Workers of America do bind themselves to sustain said Union in the rights, privileges, and benefits as a Union under their protection.

In witness whereof we have subscribed our names and affixed our Seal, this first day of April 19[illegible]

James D. Carey
President

[illegible]
Secretary-Treasurer

BOARD'S EXHIBIT No. 24

O. K. by Com.
7612 Dix Court

AUTHORIZATION FOR REPRESENTATION

Date 4-1-37

I, the undersigned, employee of the .....
(Insert name of company)
employed as Pol. & Buffer hereby authorize International and National Unions in good standing with the American Federation of Labor, to represent me and, in my behalf, to negotiate and conclude all agreements as to hours of labor, wages and other employment conditions.

The full power and authority to act for the undersigned as described herein supersedes any power or authority heretofore given to any person or organization to represent me, and shall remain in full force and effect for one year from date and thereafter, subject to thirty (30) days written notice of my desire to withdraw such power and authority to act for me in the matters referred to herein.

Art Troyan,
Signature of employee

.....
Address

Muehlhoffer
Witness

(Union Label)

BOARD'S EXHIBIT No. 26

Cleveland, Ohio,
March 31st, 1937.

To employees of Electric Vacuum Company:

Representatives of A. F. of L. organizations having a working agreement with the Electric Vacuum Company have endeavored to clear up the situation that resulted in the closing of the plant. Conferences have been held with representatives of the Company and it is now our opinion that the real solution to the problem is proper enforcement of the present agreement, and that no one be allowed to resume work unless affiliated with these organizations.

We are interested in having the plant reopen Monday Aprii 5th and in order to get a definite expression from the membership a Special meeting will be held,

Friday April 2nd at 2 P. M.
1000 Walnut Ave.

Some of the organizations have grievances that must be settled and adjustment of wage rates, also needs attention. It is intended to have a program adopted at the Friday meeting that will result in speedy and effective handling of grievanees and wage negotiations.

We urge all members to attend this meeting so operations may be resumed Monday morning.

Fraternally yours,
Ray Muehlhoffer,
Bus Rep. Metal Polishers 13,
Ralph Gordon,
Bus. Rep. Machinists,
Warren Magee,
Bus. Rep. Machinists,
Frank Ledasil,
Bus. Rep. Federal Union,
Chas. Madigan,
Bus. Rep. Pattern Makers,
John Owens,
Bus. Rep. Operating Engineers.

Board's Exhibit No. 26

Approved:

Thos. Lenahan,
Sect. Cleve. Federation
of Labor.
J. P. McWeeny,
Pres. Cleve. Metal Trades
Council.
stbau$19366
Union Typist

BOARD'S EXHIBIT No. 27

(POSTAL TELEGRAM)

NA62 15 Rec'd Apr. 1, 1937

EB Cleveland Ohio 1245P Apr 1 1937
Julius Emspak
1133 Broadway Room 1521

Send charter immediately for Electric Vacuum must be number seven twenty must have for Monday

James Pascoe
1256P

(WESTERN UNION TELEGRAM)

April 2, 1937

Mr. James Pascoe
970 East 152nd Street
Cleveland Ohio

Charter for Local Seven Twenty sent yesterday

Julius Emspak

Board's Exhibit No. 27

April 2, 1937.

Mr. James Pascoe,
Organizer, U. E. & R. W. of A.
970 E. ~~152 Street~~
Cleveland, Ohio.

Dear Brother Pascoe:

We received your telegram and the Charter for the Electric Vacuum has been sent to you. We will await further communication from you before other supplies are forwarded.

Please advise us as soon as possible the names and addresses of the officers of this local.

Fraternally yours,
Executive Secretary.

SA:K
BS&AU
12646

C. I. O.'S EXHIBIT No. 1

EMPLOYMENT CLEARANCE CARD
Cleveland Metal Trades Council
Affiliated with the American Federation of Labor

4-5-1937

..... is a member in good standing in
Name of Union and Number of Local
Local 233 and is recommended for employment at the Electric Vacuum Cleaner Company.

Issued by John Toth, Jr.,
Business Representative.

(Seal)
(Union label)

A. F. of L.'S EXHIBIT No. 2

AUTHORIZATION FOR REPRESENTATION

I, the undersigned, employee of the Electric Vacuum
(Insert name of company)
Cleaner Co. employed as Assembler hereby authorize my
(Craft—Mechanic, Helper or Apprentice)
Craft Organization, affiliated with the American Federation of Labor,

	Membership Fee
Metal Polishers International Union	$3.50
International Association of Machinists	3.75 and $5.00
International Molders Union of North America	3.00 and 5.00
Pattern Makers Association	5.00 and 7.00
Federal Labor Union	2.50

to represent me and, in my behalf, to negotiate and conclude all agreements as to hours of labor, wages and other employment conditions. I also authorize the Company to deduct, within thirty days, from wages due, the prevailing initiation or reinstatement fee of the organization as indicated hereon and transmit same to the authorized representative of the organization.

The full power and authority to act for the undersigned as described herein supersedes any power or authority heretofore given to any person or organization to represent me, and shall remain in full force and effect for one year from date and thereafter, subject to thirty (30) days written notice of my desire to withdraw such power and authority to act for me in the matters referred to herein.

6-17-35
Date

Frank Vild
Signature of employee
(Union Label)

PROCEEDINGS IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

Order granting motion for leave to intervene

(Entered: March 11, 1941)

It is ordered that the motion of International Molders' Union of North America, Local 430; Pattern Makers' Association of Cleveland and Vicinity; International Association of Machinists, District No. 54; Metal Polishers' International Union, Local No. 3; and Federal Labor Union No. 18907, for leave to intervene and file briefs in this cause is hereby granted. The matter of additional time for oral argument is reserved until the hearing.

Cause argued and submitted

May 7, 1941

Before SIMONS, ALLEN, and HAMILTON, *JJ.*

This cause is argued by Philip G. Phillips for petitioner; by L. C. Spieth for respondent; and by Joseph Padway for intervenors, and is submitted to the Court.

Decree entered

June 6, 1941

On petition to enforce an order of the National Labor Relations Board. This cause came on to be heard on the transcript of the record from the National Labor Relations Board, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this court that the order be set aside and the petition to enforce dismissed.

United States Circuit Court of Appeals for the Sixth Circuit

I, J. W. Menziez, Clerk of the United States Circuit Court of Appeals for the Sixth Circuit, do hereby certify that the foregoing is a true and correct copy of record and proceedings in the case of National Labor Relations Board v. Electric Vacuum Cleaner Company, Inc., et al., No. 8748, as the same remains upon the files and records of the said United States Circuit Court of Appeals for the Sixth Circuit and of the whole thereof.

In testimony whereof, I have hereunto subscribed my name an affixed the seal of said Court at the City of Cincinnati, Ohio, thi 2nd day of September, A. D. 1941.

[SEAL] J. W. MENZIES,
Clerk of the United States Circuit Court of Appeals for the Sixth Circuit.

United States Circuit Court of Appeals, Sixth Circuit

No. 8748

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

ELECTRIC VACUUM CLEANER COMPANY, INC., RESPONDENT

Petition for Enforcement of an Order of the National Labo Relations Board

Decided June 6, 1941

Before SIMONS, ALLEN, and HAMILTON, Circuit Judges

ALLEN, Circuit Judge: This case arises upon petition for en forcement of an order of the National Labor Relations Boar issued against the respondent corporation, which manufacture and sells electric vacuum cleaners in the United States and Canad The interstate character of the business is not contested.

The Board found that the respondent had attempted to defe the organization of its employees by the United Electrical an Radio Workers of America (hereinafter called the United), a organization affiliated with the Committee for Industrial Organ zation (hereinafter called the C. I. O.), and had rendered illeg assistance to a rival labor organization, the American Federatio of Labor (hereinafter called the A. F. of L.).

The case arises out of the following facts:

In 1935 the Mechanics Educational Society, an unaffiliated unio which had a substantial membership among respondent's produc tion employees, called a strike for the purpose of securing a wag increase. During the strike, which lasted about ten weeks, th strikers called in representatives of the A. F. of L. for the purpos of negotiating a settlement and a bargaining contract. Befor the contract was signed, the respondent demanded and receive evidence that the A. F. of L. affiliates had been designated as ba gaining agents for the majority of the employees, being presente with written authorizations to this effect signed by 608 out of total of 799 employees. The authorizations were checked wit

the pay roll in order to test their authenticity. As a result, the respondent and certain locals of the Metal Polishers' Union, the International Association of Machinists, the International Molders' Union, the Pattern Makers Association of Cleveland and Vicinity, and the Federal Labor Union, all affiliated with the A. F. of L. and all parties herein, on June 22, 1935, entered into a written contract recognizing the unions named as the agents for their respective crafts for collective bargaining during the period of one year. An oral agreement was entered into at the same time. While there is some controversy as to the interpretation of this agreement, there is no dispute either as to its existence or its terms. It provided that in the future all new employees, after a probationary period of two weeks, should be compelled to join the appropriate craft union of the A. F. of L., but that the old employees, of whom some sixty-seven did not wish to join the A. F. of L., should not be compelled to do so. The respondent published notice of the contract throughout the plant and at the same time notified the employees that any one who did anything to disturb the peaceful and friendly relationship under the contract would be considered as working against the best interests of the company and subject to discharge.

Both the written and oral contracts were renewed for one year upon July 6, 1936. At that time 771 employees out of 809 were members of the A. F. of L., and had signed authorization slips designating the A. F. of L. as their bargaining agent "for one year and thereafter." A copy of a typical authorization is inserted in the margin.[1] During the life of the second contract, in March

---

[1] AUTHORIZATION FOR REPRESENTATION

I, the undersigned, employee of the Electric Vacuum Cleaner Co. employed as Assembler hereby authorize my

(Craft—Mechanic, Helper, or Apprentice)

Craft Organization, Affiliated with the American Federation of Labor,

	Membership Fee
Metal Polishers International Union	$3.50
International Association of Machinists	3.75 and $5.00
International Molders Union of North America	3.00 and 5.00
Pattern Makers Association	5.00 and 7.00
Federal Labor Union	2.50

to represent me and, in my behalf, to negotiate and conclude all agreements as to hours of labor, wages, and other employment conditions. I also authorize the Company to deduct, within thirty days, from wages due, the prevailing initiation or reinstatement fee of the organization as indicated hereon and transmit same to the authorized representative of the organization.

The full power and authority to act for the undersigned as described herein supersedes any power or authority heretofore given to any person or organization to represent me, and shall remain in full force and effect for one year from date and thereafter, subject to thirty (30) days written notice of my desire to withdraw such power and authority to act for me in the matters referred to herein.

Signature of employee

(Union Label)

1937, a movement started among some of the old employees to organize a C. I. O. union in the plant. Some sixty employees met with an organizer of the United, signed application cards for membership therein, and solicited membership actively throughout the plant. In connection with this agitation for the C. I. O., the representatives of the A. F. of L., who under the contract had been permitted to enter the plant and to sign up employees for union membership, endeavored to secure the signatures of some of the old men. Edward Ramsey, one of the old employees, was asked to join the A. F. of L. Upon his refusal, a representative of the Cleveland Federation of Labor, in the presence of Paulus, respondent's superintendent, told Ramsey he was fired, and Paulus notified Ramsey's foreman of that fact. Other men were asked to join the A. F. of L. in the presence of Paulus or of certain of respondent's officials. After Ramsey's discharge a sit-down strike was started by the men who had signed the C. I. O. applications, and from the afternoon of Thursday, March 18, 1937, to the morning of Friday, March 19th, some ninety employees participated in a sit-down strike in the machine shop. At the request of the representatives of the A. F. of L. the respondent closed the plant from March 20th until April 5th, and between those days a new contract was negotiated with the affiliates of the A. F. of L., which provided for a closed shop, and membership of all employees without exception in the craft unions of the A. F. of L. When the plant reopened the men were required to present A. F. of L. clearance cards in order to secure reemployment. 910 of the 1,032 employees signed a written approval of the closed shop contract, and at the time of the trial before the examiner, 964 had signed such approval slips.

The Board directed the respondent to cease giving effect to the closed shop clause of its contract with the A. F. of L., dated May 20, 1937, and to cease giving effect to any provision of that contract if and when the Board should certify another labor organization as the exclusive collective bargaining representative of respondent's employees. It ordered respondent to pay back wages to 24 employees against whom it found that discrimination had been practiced, to reinstate 22 of them, and to post the usual notices. Nineteen of the 24 were old employees, 18 of whom were members of the A. F. of L.

Respondent agrees that in absence of the contracts of 1935, 1936, and 1937, the discharges and the shut down of the plant were discriminatory, and this view is clearly correct. Phelps Dodge Corp. v. National Labor Relations Board, 312 U. S. — (decided April 28, 1941); H. J. Heinz Co. v. National Labor Relations Board, 311 U. S. 514, 61 S. Ct. 320; National Labor Relations Board v. Link Belt Co., 311 U. S. 584, 61 S. Ct. 358. But it contends that it made a valid agreement with the affiliates of the A. F. of L., specifically

authorized under § 8 (3) of the statute, which was consummated with unions not established, maintained or assisted by the respondent; that whatever acts were done by the respondent were under the contract and in furtherance thereof, and that it is not a violation of the National Labor Relations Act (49 Stat. 449) to discharge employees for interference with a valid union contract.

The pertinent portions of the statute read as follows:

"Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection."

"Sec. 8. It shall be an unfair labor practice for an employer—

"(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

* * * * * *

"(3) B discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: Provided, That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., Sup. VII, title 15, secs. 701–712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made."

Clearly the proviso of § 8 (3) validates certain action which would otherwise constitute illegal discrimination under the Act. If the proviso had not been enacted, no employer, under the statute, could refuse to hire an applicant for work because of his membership or nonmembership in any labor organization (Phelps Dodge Corp. v. National Labor Relations Board, supra), nor require him to join any specific organization before employing him, as may legally be done pursuant to a contract executed in accordance with the proviso.

The Board decided that prior to March, 1937, the respondent was entitled to require new employees to join the A. F. of L. affiliates, finding that the agreements both of 1935 and 1936 were executed when the A. F. of L. affiliates represented a majority of the employees and had not been assisted by any unfair labor practice on the part of the respondent. It considered, however, that these contracts did not and could not limit the right of old employees

to join the United and to induce other employees, whether or not members of the A. F. of L., to abandon membership in the A. F. of L. for membership in the C. I. O., and therefore decided that the shut down of the plant at the request of the A. F. of L. was an unlawful act of assistance, and that the acts and negotiations in connection with the reopening of the plant and the requirement of membership cards in the A. F. of L. for reemployment constituted illegal discrimination. It concluded that the proviso of § 8 (3) does not permit imposition of the penalty of discharge in a case where no notice of the existence of the agreement has been given, and found as a fact that no notice of the agreement had been given to the new employees. It decided that the closed shop contract of May, 1937, was invalid because the A. F. of L. had been assisted by the respondent through unfair labor practices in violation of the statute.

The legal conclusion made by the Board that the members of the A. F. of L., after the 1935 and 1936 contracts were executed, were free to abandon such membership at will, when considered in the light of the authorizations signed by the men and the total failure to file withdrawals in accordance therewith, is plainly erroneous. So far as the understanding of the parties illuminates the meaning of the obligation, it is that the men were bound for the period defined in the authorizations. There was no testimony to the contrary.

In order to reach its conclusions, the Board ignored the fact that the contract of 1936, found by it to be valid under the statute, granted recognition as exclusive collective bargaining agent to the A. F. of L. and required its members to maintain and perform the contract for one year. It was an implied term of the contract that every member of the organization would cooperate in the enforcement of the agreement made between respondent and the A. F. of L. affiliates which he had expressly authorized to represent him in these matters, and would not take action looking toward the violation of the contract. The C. I. O. agitation, the sit-down strike, the closing of the plant, and the making of the closed shop agreement of May, 1937, all occurred before this year had expired.

There is no question as to the existence of the contracts of 1935 and 1936. As found by the Board each of them was made with a labor organization not established, maintained or assisted by any unfair labor practice, and representing an uncoerced majority of the employees. Each of these contracts required as a condition of employment membership in the A. F. of L. with reference to all men subsequently employed, and thus falls squarely within and is validated by the statute. It is immaterial whether the men considered the contract as establishing a closed shop or a preferential shop. The contracts were in the nature of closed shop agreements.

for eventually, as old men dropped out, if the contracts were renewed a genuine closed shop would be established.

The mandate of the proviso is not limited to the usual closed shop; it does not require that the condition of membership in the union contracted with should attach to men previously employed as well as to those employed in the future. Nor does it prohibit mutual assistance and cooperation between the parties to such contract unless such assistance amounts to an unfair labor practice. The express purpose of the statute was the establishment of industrial peace, and the proviso was enacted to give the employer the opportunity of dealing in an orderly fashion with one organization only, instead of with various conflicting organizations. In order to carry out its purpose, obviously both contracting parties are compelled to perform their obligations thereunder. The Congress would not have specifically authorized a contract of this nature unless it had intended that both parties should be bound thereby. If the men agree to operate under the contract for a certain period they are legally bound, in absence of wrong-doing by the employer, not to abrogate the contract except in accordance with its terms. If the one-year term limits the freedom of the employees at will to discard membership in one union for membership in another, the limitation has been freely agreed to by the men themselves, and the right of organization with representatives of their own choosing is curtailed not by the employer, but by their own valid agreement.

In the instant case it was reasonable that these men should agree to exempt from the requirement of union membership the older men whose unwillingness to join the A. F. of L. was preventing the settlement of the strike initiated by the Mechanics Educational Society, and the exemption in no way affects the legality of the agreement. The contract of May 1937, providing for a closed shop, was negotiated during the existence of the valid contract of 1936 by the representatives designated therein; and if the transactions leading up to the closed shop contract were justified by respondent's efforts to maintain the valid contract of 1936, then the closed shop agreement is lawful and no finding of unfair labor practices is justified. Unquestionably the respondent assisted the A. F. of L. from March 1937, to May 1937, and the controlling question is whether this assistance was illegal.

At the time that some of the old employees called a C. I. O. organizer into the plant, all but 38 of the employees working when the 1936 contract was executed had signed written authorizations, as hereinbefore described. These authorizations, running for a term of one year and thereafter, could be withdrawn upon thirty days written notice; but the record presents no such withdrawal. The term of one year was reasonable and the au-

thorizations were in every respect legal. Signing the authorizations entitled the men to the benefits of union membership, including the benefits of the contract between the respondent and the affiliated unions, and they in turn were bound thereby during the term of the authorizations. They were both ethically and legally bound not to disrupt the contract. It follows that any employees who were members of the A. F. of L., whether old or new men, violated the contract when they tried to bring in a rival union, and became rightfully subject to discharge. The National Labor Relations Act does not prohibit an effective discharge for repudiation by the employee of his agreement. National Labor Relations Board v. Sands Mfg. Co., 306 U. S. 332, 344. The Board, therefore erred as to its order finding the respondent guilty of discrimination with reference to 18 of the 24 employees named in the order because these 18 were members of A. F. of L. affiliates, were bound by the contract until June 1937, and were compelled to be in good union standing in order to continue in respondent's employ.

The new men who were required under the valid union contract to join the A. F. of L. also had no right to aid in disrupting the relations established thereby. The requirement, agreed upon through negotiations by the collective bargaining representatives of a clear majority, that all the men present A. F. of L. clearance papers after the plant was reopened, was reasonable and not unlawful.

Ramsey was the only man found to have been discharged for failure to join the A. F. of L. He was returned to work when the plant reopened on April 5th, after the sit-down strike, and has been with the company ever since. The Board did not order payment of any money to Ramsey for loss of wages. He suffered no loss of time except during the time that the plant was shut down.

We differ from the Board as to its construction of the statute with reference to notice. Knowledge of the terms of the agreement was received by the representatives who negotiated the contracts while acting within the scope of their authority, and it is elementary that such notice to the unions was notice at least to all but 38 of the men when the contract was signed in June 1936. In view of the provisions of §9 (a) that the organization chosen by the majority shall be the exclusive representative of "all the employees" in the appropriate unit for the purpose of collective bargaining, we think that notice to the affiliates was notice to every employee under the statute. The proviso does not require as a condition to the validity of a restricted contract made thereunder that notice of the existence of the contract must be given at the time of employment, nor that the employer must

give notice. It is uncontradicted on this record that new employees were to be given two weeks probation, and, if their work was satisfactory, they were then required to join the union. This arrangement was reasonable and in no way illegal. It is also uncontradicted that it was the duty of the appropriate craft union to solicit men for membership. The duty of notice in no case rested upon the respondent. Before the controversy arose and while the contract of 1935 was in effect, the respondent gave the union representatives access to the plant for the purpose of carrying out their obligations. In a few cases, where new men employed stated that they had no notice of the requirement, the union had merely failed to perform its function of signing them up. This dereliction cannot rightly be charged to the respondent.

It follows that the closed shop agreement of May 1937, was valid under § 8 (3), for the acts of respondent in closing the plant, discharging the agitators, and in endeavoring otherwise to maintain the lawful contract of 1936 were not unfair labor practices. The Board erred in holding that members of the A. F. of L., whether new or old employees, who were not recalled because of their interference with the contract, were discriminated against in violation of the statute.

The Board contends that all of the acts of the respondent subsequent to March 1937, were illegal acts of assistance of the A. F. of L. within the scope of the decision in International Association of Machinists v. National Labor Relations Board, 311 U. S. 72. We think that this case is squarely differentiated from the instant case upon the facts, and that it does not hold that an employer who has made a valid contract with a union is forbidden to prevent the entrance of a rival union into its plant. In the cited case, the employer had repeatedly expressed violent hostility to the C. I. O.; in violation of the Act it had maintained a company union, and the same organizers among its employees who had established the company union used pressure upon employees to joint the A. F. of L. In the instant case, not the slightest preference toward any union whatever is shown on the part of the respondent until after the signing of the valid contract of 1936, which represented the choice of eighty-five per cent of respondent's employees. The International Machinists case does not hold that an employer who has made a valid contract with a union, looking toward a closed shop, may not take action pursuant to negotiations with the exclusive bargaining representatives under the Act, to prevent the entrance of a rival union into its plant and the consequent disruption of industrial peace. Section 8 (3) was enacted to obviate this very situation. It validates acts which in the absence of such a contract would

be illegal under the statute, and it validates them in order that the employer may protect itself from ruinous interunion controversy. The shut down of the plant, failure to recall certain employees, and the making of the closed shop agreement were all in furtherance of the valid contracts previously entered into, and the Board erred in finding the respondent guilty of discrimination and violation of the statute.

The order is set aside, and the petition to enforce is dismissed.

U. S. GOVERNMENT PRINTING OFFICE: 1941

Supreme Court of the United States

Order allowing certiorari

Filed October 20, 1941

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

No. 588

In the Supreme Court of the United States

OCTOBER TERM, 1941

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

ELECTRIC VACUUM CLEANER COMPANY, INC.; INTERNATIONAL MOLDERS' UNION OF NORTH AMERICA, LOCAL 430; PATTERN MAKERS' ASSOCIATION OF CLEVELAND AND VICINITY; INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT NO. 54; METAL POLISHERS' INTERNATIONAL UNION, LOCAL NO. 3; AND FEDERAL LABOR UNION NO. 18,907

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

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CITATIONS

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Statute involved:

National Labor Relations Act of July 5, 1935, c. 372, 49 Stat. 449 (29 U. S. C. Supp. V, Sec. 151 et seq.):

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411861—41——1

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ELECTRIC VACUUM CLEANER COMPANY, INC.; INTERNATIONAL MOLDERS' UNION OF NORTH AMERICA, LOCAL 430; PATTERN MAKERS' ASSOCIATION OF CLEVELAND AND VICINITY; INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT NO. 54; METAL POLISHERS' INTERNATIONAL UNION, LOCAL NO. 3; AND FEDERAL LABOR UNION NO. 18,907

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

The Solicitor General, on behalf of the National Labor Relations Board, prays that a writ of certiorari issue to review the decree of the United States Circuit Court of Appeals for the Sixth Circuit entered on June 6, 1941 (R. 866), setting aside and refusing to enforce an order issued by the Board against Electric Vacuum Cleaner Company, Inc. (R. 211–215).

OPINIONS BELOW

The opinion of the Circuit Court of Appeals (R. 867–875) is reported in 120 F. (2d) 611. The findings of fact, conclusions of law, and order of the Board (R. 150–217) are reported in 18 N. L. R. B. 591.

JURISDICTION

The decree of the Circuit Court of Appeals was entered on June 6, 1941 (R. 866). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and under Section 10 (e) of the National Labor Relations Act.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act are set forth in the Appendix.

QUESTIONS PRESENTED

The respondent in 1935 and 1936 made one year written contracts with a labor union accompanied by an oral and never disclosed understanding that employees subsequently hired would be required to join that union. Respondent in 1937, shortly prior to the expiration of the 1936 contract, sought by coercive and discriminatory acts to force employees not covered by the oral agreement into the union, and to prevent them from joining a rival union. After a shut-down designed to aid the first union, respondent reopened under a full

closed-shop agreement with it. The questions are:

1. Whether the respondent by virtue of its 1935 and 1936 agreements with the union as to the membership of new employees was protected by the proviso of section 8 (3) of the Act in compelling the union membership of old employees.

2. Whether the oral and secret understanding with the union at the time the 1935 and 1936 contracts were signed was sufficient to invoke the protection of the proviso of section 8 (3) even as to the new employees.

3. Whether the 1935 and 1936 agreements, read in the light of revocable membership applications signed by the union members, implied an undertaking by those employees not to change their union affiliation during the life of the 1935 and 1936 agreements.

4. Whether, assuming there was such an undertaking, the respondent by coercion and discrimination may discourage the employees from advocating toward the close of the contract period a change in union affiliation.

5. Whether the favored union had been maintained and assisted by the respondent, prior to the 1937 closed-shop agreement, so that this agreement is not entitled to the protection of the proviso of section 8 (3) of the Act.

STATEMENT

Upon the usual proceedings, the Board issued its findings of fact, conclusions of law, and order

(R. 150–217). Omitting jurisdictional findings, the facts, as found by the Board and as shown by the evidence, may be summarized as follows:[1]

On June 22, 1935, the Company entered into a written contract with five unions affiliated with the American Federation of Labor;[2] the contract covered terms and conditions of employment and granted exclusive recognition to the A. F. of L. Affiliates for a period of one year (R. 160; Bd. Exh. 6, 845–848, 237–238, 810–811). Before signing the contract the Company was presented with membership authorizations by the A. F. of L. Affiliates, signed by 608 out of a total of 799 employees (R. 160; A. F. of L. Exh. 2, 865, 253). Although the A. F. of L. Affiliates had requested a closed shop, the Company refused to grant the request. The parties orally agreed, however, that all new employees, those hired after the date of the contract,[3] should be required to join the appropriate A. F. of L. affiliate after a work-proba-

[1] In the following statement, the references preceding the semicolons are to the Board's findings and the succeeding references are to the supporting evidence.

[2] International Molders' Union of North America, Local 430; Pattern Makers' Association of Cleveland and Vicinity; International Association of Machinists, District No. 54; Metal Polishers' International Union, Local No. 3; and Federal Labor Union No. 18907.

[3] We refer, as does the Board's decision, to those in the Company's employ on June 22, 1935, when the contract was entered into, as "old" employees, and to the persons hired thereafter as "new" employees.

tion period of two weeks. (R. 160; 264–265, 811, 750, 741–742.) The oral agreement was never put in writing and its existence was never revealed to the employees (R. 164–166; 741–742, 750–751, 688, 811). The Board found specifically that the oral agreement applied only to new employees and that it did not require the old employees who had joined the A. F. of L. Affiliates to maintain their union membership as a condition of employment (R. 161–163).

On July 6, 1936, these written and oral agreements were extended to June 23, 1937; but again the employees were not informed of the oral agreement requiring new employees to join the A. F. of L. Affiliates (R. 164; Bd. Exh. 7, 238, 849–851, 264–265, 812, 686, 741–742, 689–690). The A. F. of L. Affiliates at this time represented all but 38 of the workers (R. 161; 253).

In March 1937, about 3 months prior to the terminal date of the contracts renewed in 1936, a number of the Company's employees took steps to organize a local union to be affiliated with the United Electrical and Radio Workers of America, which, in turn, was an affiliate of the C. I. O. (R. 170, 177; 379–381, 429–430). On March 17 about 60 employees had signed up with the United (R. 180; 429–430).

The Company and the A. F. of L. Affiliates immediately took joint action to compel the employees to join the A. F. of L. Affiliates and keep

them from joining the C. I. O. On March 16, 17, and 18, 1937, groups of men, most, if not all, of whom were old employees, were sent to the offices of company executives and, in the presence of ranking A. F. of L. officials, were ordered to join the A. F. of L. Affiliates. R. B. Wilson, the executive vice president of the Company, and George H. Paulus, the plant superintendent, were among those who engaged in these coercive measures. (R. 166–178; 305–308, 510, 513–518, 685, 526–529, 691, 268.) A number of the employees signed applications in the executive's offices for membership in the A. F. of L. Affiliates (R. 177–178; 308, 699). One old employee named Ramsey refused, however, to sign such an application and was discharged forthwith (R. 172–177; 525–529, 691, 268). Ramsey's discharge caused a one-day sit-down strike in the machine shop, which was amicably settled when the Company and the A. F. of L. Affiliates agreed to Ramsey's reinstatement and agreed that the employees should have the right to join a union of their own choosing (R. 180–185; 383–385, 267–268, 281–282, 431–438, Bd. Exh. 19, R. 857, 268).

The strike ended on Friday, March 19; the employees expected to return to work on Monday, March 22 (R. 184; 437–438, 484, 496). Vice-President Wilson testified that that was also the Company's intention when the strikers left the plant (R. 279–280). On Saturday, March 20, however,

the Company inserted notices in the local newspapers, stating that the plant would be closed on Monday and that the shutdown was at the request of the A. F. of L. Affiliates (R. 185–187; Bd. Exh. 15, R. 856). Wilson testified that the A. F. of L. Affiliates demanded that the plant be closed so that "they might go over the situation and get their lines in order" in order to defeat the C. I. O. attempt "to proselyte members" among the employees (R. 255–256, 273).

On March 28 a meeting of the United was held, attended by about 500 employees, for the purpose of securing formal resignations from the A. F. of L. Affiliates (R. 189; 389–391, 399–401, 611, 617–618, 340–341). On April 2, the United mailed a letter to the company stating that a majority of the employees had resigned from the A. F. of L. Affiliates and had joined the United (R. 189; Bd. Ex. 11, R. 240–241).

The shut-down lasted for two weeks; the plant reopened on Monday, April 5. On the preceding Saturday and Sunday, the Company inserted notices in the local newspapers, stating that under its 1936 contract it was required to "employ only persons affiliated with" the A. F. of L. Affiliates; the notices announced the reopening of the plant and concluded with a statement that only those employees who were members of the A. F. of L. Affiliates would be employed (R. 189, 192–194; Bd. Exh. 8, R. 852). The Board found that these notices misrepresented the terms of the 1936 con-

tracts and were deliberately intended to conceal the recent origin of a new closed-shop agreement which the Company and the A. F. of L. Affiliates had arrived at in discussions on April 3, 1937, relative to reopening the plant (R. 193; 253–256, 726, 813).

The Board found that (1) by discharging Ramsey, (2) by forcing old employees to join the A. F. of L. Affiliates, and (3) by the lock-out, the Company had interfered with, restrained, and coerced its employees in the exercise of rights guaranteed by Section 7 of the Act, and had thereby violated Section 8 (1) of the Act (R. 177–178, 187–188). It also found that the A. F. of L. Affiliates were the beneficiaries of these unfair labor practices (R. 196); hence that on April 3, 1937, they were precluded from making a closed-shop contract by the proviso in Section 8 (3) of the statute, which declares that such a contract may not be made with a labor organization "assisted by any * * * unfair labor practice" (R. 194–195).

Conformably to the closed-shop agreement of April 3, 1937, the Company refused to permit any employee to return to work who did not present a clearance card from the A. F. of L. Affiliates (R. 190; C. I. O. Exh. 1, R. 864, 276–277, 252, 368, 332–333, 342, 353, 479, 726, 813).

Twenty-four members of the C. I. O., of whom 19 were old employees[4] and 5 were new, were victims of the Company's discriminatory reinstatement policy (R. 197–200).[5] The Board concluded that the failure to reinstate these employees was in violation of Section 8 (3) and (1) of the Act (R. 197–200). In so finding, the Board noted that the April 3, 1937, closed-shop contract, because of its invalidity, afforded no justification for the discrimination against these employees (R. 197). With respect to the 5 new employees, the Board noted that the secret 1936 oral agreement requiring new employees to become members of the A. F. of L. Affiliates (*supra*, p. 5) had in effect been abandoned on April 3, 1937, when the parties agreed upon the more comprehensive closed-shop agreement (R. 193–194, 199). It therefore concluded that the 1936 oral contract could not justify the discrimination against the new men. Independently of this, the Board held that the

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[4] Three of the 19 had never been a member of the A. F. of L. Affiliates (R. 197, note 43; 455–456, 482–483, 372–374).

[5] Some were refused clearance by the A. F. of L. Affiliates (R. 300, 310–312, 323, 325, 328–329, 347, 349–350, 462, 464–467, 559, 560–561, 570–571, 584–585, 586, 587–588, 600, 601–602, 605, 610, 613, 617, 618–619, 630, 631–632, 635, 636–637); others made persistent attempts to get clearance cards, but after being shunted from one A. F. of L. representative to another, abandoned further efforts (R. 337, 340–343, 364, 365–369, 482, 485–487, 621, 622, 627–628); a few got clearance cards after persistent attempts, only to be denied employment on the ground that their jobs had in the meanwhile been filled (R. 447, 448, 449–452, 455, 458–461, 553–554, 555–557).

Company's failure to notify the employees of the existence of the agreement deprived it of the right which it might otherwise have had to insist that new employees become members of the A. F. of L. Affiliates as a condition of reinstatement (R. 179, 199–200).

On May 20, 1937, the oral closed-shop agreement of April 3, 1937, was superseded by a written contract, requiring all employees to be members of the A. F. of L. Affiliates, irrespective of when they had entered the Company's employ (R. 196; Bd. Exh. 10, R. 853, 41–43, 39). The Board found that this agreement was invalid for the same reasons that the April 3 contract was unlawful (R. 200).

Upon these findings, the Board ordered the Company to cease and desist from the unfair labor practices found; to cease giving effect to the closed-shop clause of its contract with the A. F. of L. Affiliates, dated May 20, 1937; and to cease giving effect to any provision of that contract if and when the Board should certify another labor organization as the exclusive bargaining representative of its employees (R. 211–213). As affirmative action, the Board ordered the Company to offer reinstatement with back pay to 22 of the 24 employees discriminated against,* and to post appropriate notices (R. 213–217).

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* The other 2 victims of discrimination had been reinstated prior to the hearing (p. 208).

Thereafter the Board petitioned the court below for enforcement of its order (R. 1–9). A motion of the A. F. of L. Affiliates (other than Pattern Makers' Association of Cleveland and Vicinity) to intervene was granted (R. 44–45). On June 6, 1941, the court below handed down its opinion and entered a decree setting aside the Board's order in its entirety and dismissing the petition for enforcement (R. 866).

REASONS FOR GRANTING THE WRIT

The court below recognized that the respondent had assisted the A. F. of L. Affiliates from March to May 1937, and that this assistance would normally be illegal (R. 869–870). It nevertheless held that the assistance was "justified by respondent's efforts to maintain the valid contract of 1936" (R. 872). Accordingly, the court held that the closed-shop contracts of April 3 and May 20, 1937, were authorized by the proviso of section 8 (3) and that respondent had committed no unfair labor practice (R. 874).

1. The 1935 and 1936 contracts between respondent and the A. F. of L. Affiliates were not closed-shop contracts; as written they contained no provision requiring membership in the A. F. of L. Affiliates. The oral understanding was only that new employees would be required to join, and neither new nor old employees were given notice of this understanding (*supra*, pp. 4–5). Plainly, the Act does not contemplate that the employer

can justify discriminatory conduct on the ground of an agreement never disclosed to his employees. But even assuming there had been no secrecy, the 1935 and 1936 contracts did not cover the old employees. Section 8 (3), therefore, does not authorize discrimination against them because of their failure to join the A. F. of L. Affiliates. See *National Labor Relations Board* v. *Waterman S. S. Co.*, 309 U. S. 206, 213; *South Atlantic S. S. Co.* v. *National Labor Relations Board*, 116 F. (2d) 480 (C. C. A. 5), certiorari denied, No. 969, October Term, 1940. This branch of its decision raises questions of large importance which should be settled.

The respondent actively coerced old employees, not covered by the contract, into joining the A. F. of L. Affiliates; when the rival United threatened the position of the A. F. of L. Affiliates, the employer shut down the plant and negotiated a full closed-shop contract before reopening (*supra*, pp. 5–8). The court below justified this conduct under the proviso of section 8 (3). It said that "the proviso was enacted to give the employer the opportunity of dealing in an orderly fashion with one organization only, instead of with various conflicting organizations" (R. 872). Neither the terms of the proviso nor its history [7] justify such a conclu-

[7] The Senate Committee (S. Rpt. No. 573, 74th Cong., 1st Sess., pp. 11–12) said:

"The reason for the insertion of the proviso is as follows:

"According to some interpretations, the provision of section 7 (a) of the National Industrial Recovery Act, assur-

sion. The proviso was designed simply to ensure that section 8 (3) did not make the closed-shop contract illegal. It permits the union and the employer to make union membership a condition of employment, but does not remove the employer from the command of section 8 (1), that in other respects he neither interfere with nor coerce his employees in the exercise of their right to join a labor organization of their own choosing.

The oral contract of April 3 and the written contract of May 20, 1937, were full closed-shop agreements. But the respondent and the A. F. of L. Affiliates were at those dates disqualified from entering into such a contract. Section 8 (3) authorizes an agreement, requiring union membership as a condition of employment, "with a labor organization (not * * * assisted by any * * * unfair labor practice)." The A. F. of L. Affiliates, as the court below recognized (R. 869, 872), prior to the 1937 contracts had been assisted by conduct which would be an unfair labor

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ing the freedom of employees 'to organize and bargain collectively through representatives of their own choosing,' was deemed to illegalize the closed shop. The committee feels that this was not the intent of Congress when it wrote section 7 (a); that it is not the intent of Congress today; and that it is not desirable to interfere in this drastic way with the laws of the several States on this subject."

The Report went on to emphasize, however, that:

"* * * the bill is extremely careful to forestall the making of closed-shop agreements with organizations that have been 'established, maintained, or assisted' by any action defined in the bill as an unfair labor practice * * *."

practice were it not for the proviso in section 8 (3). But that proviso by its terms excludes from its protection a closed-shop contract with an assisted organization. The decision below, which disregards the employer assistance prior to the closed-shop contract, departs from the decisions of this and other courts. *I. A. of M.* v. *National Labor Relations Board*, 311 U. S. 72, 81; *Hamilton-Brown Shoe Co.* v. *National Labor Relations Board*, 104 F. (2d) 49, 54 (C. C. A. 8); *National Labor Relations Board* v. *National Motor Bearing Co.*, 105 F. (2d) 652, 659–660 (C. C. A. 9); *National Labor Relations Board* v. *J. Greenebaum Tanning Co.*, 110 F. (2d) 984, 987 (C. C. A. 7).

2. The court below, without regard to section 8 (3) and because of the revocable membership applications signed by the union members, held that it was "an implied term" of the 1936 contract that the members of the A. F. of L. Affiliates agreed during the life of the contract not to "discard membership in one union for membership in another," and that they "violated the contract when they tried to bring in a rival union, and became rightfully subject to discharge" (R. 873). There is no evidence whatever to support any finding of an express undertaking of this nature, and the finding of the Board (R. 178) is to the contrary; the court below, therefore, of necessity views such an undertaking as inherent in any

exclusive union contract. This branch of its decision similarly raises a question of importance in the administration of the Act.

Any rule such as that laid down below would gravely limit the employees' freedom to choose their representatives. Once a contract were made, the choice of representatives might often become irrevocable, since the employer could rightfully discharge any employee who advocated a change in representation. The freedom and the rights of labor require, particularly as the life of the contract draws to a close, that the employees be able to advocate a change in their affiliation without fear of discharge by an employer for so doing.

CONCLUSION

For these reasons, we respectfully submit that this petition for a writ of certiorari should be granted.

CHARLES FAHY,
Acting Solicitor General.

ROBERT B. WATTS,
General Counsel,
National Labor Relations Board.

SEPTEMBER 1941.

APPENDIX

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449; 29 U. S. C., Supp. V, Sec. 151 *et seq.*) are as follows:

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

* * * * *

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided,* That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, secs. 701-712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in

this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

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No. 588

In the Supreme Court of the United States

OCTOBER TERM, 1941

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

ELECTRIC VACUUM CLEANER COMPANY, INC.; INTERNATIONAL MOULDERS' UNION OF NORTH AMERICA, LOCAL 430; PATTERN MAKERS' ASSOCIATION OF CLEVELAND AND VICINITY; INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT NO. 54; METAL POLISHERS' INTERNATIONAL UNION, LOCAL NO. 3; AND FEDERAL LABOR UNION NO. 18907

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

SUPPLEMENTAL MEMORANDUM IN BEHALF OF THE NATIONAL LABOR RELATIONS BOARD

In the Supreme Court of the United States

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

SUPPLEMENTAL MEMORANDUM IN BEHALF OF THE NATIONAL LABOR RELATIONS BOARD

The briefs filed by the Employer and by the Unions, in opposition to our petition for a writ of certiorari, each make certain incorrect statements as to basic facts which we seek to correct by this memorandum.

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1. The Employer (Br. 3, 6) and the Unions (Br. 3) reassert as a fact a version of the oral agreement relating to new employees which the Board and the court below rejected. They say that the parties intended that old employees who were members of the Unions should be required to maintain their membership as a condition of employment. The Board found to the contrary; it found that the oral agreement related solely to new employees, and that the parties did not intend that old employees should be required to remain members of the Unions (R. 161–164).[1] The court below did not set aside this fully substantiated finding of fact; instead it held *as a matter of law*, incorrectly we believe, that old employees were bound to remain members of the Unions, not by force of the oral agreement, but on the wholly different ground that such an obligation arose by legal implication from the union contract and the authorization cards which the employees had signed (R. 871).

2. The Unions (Br. 4) assert that, "At no time did the Company threaten any employee with discharge for refusing to join the American Federation of Labor (R. 524)." This assertion is

[1] In so finding the Board fully considered and explicitly rejected all of the evidence upon which the Employer (Br. 3) and the Unions (Br. 3) rely to sustain their version of the oral agreement (R. 161–164).

contrary to findings of the Board (R. 166–178), concurred in by the court below (R. 869). It ignores, moreover, Ramsey's discharge as well as the other coercive measures taken by the Employer to compel old employees to join the Unions (see Pet. 5–6).

3. The Unions claim that the result below was correct, and the writ should therefore be denied, upon the ground that the closed-shop contracts were protected by the proviso in Section 8 (3) of the Act, despite assistance rendered the Unions prior to the making of the contracts (Br. 9–10). The argument is that the proviso invalidates a closed-shop contract only if the union's *majority* is secured or maintained by means of unfair labor practices. This construction of the proviso runs counter to its plain language, which prohibits an employer from making such a contract with a "labor organization" that has been "assisted by any action defined in this Act as an unfair labor practice."

This contention of the Unions was rejected by the Board (R. 195–196), and was not passed upon by the lower court, although urged by the Unions. If this contention is relevant at all on the question of whether or not the writ should be granted, it

argues in favor of granting the writ in order that the question might be definitively settled.[2]

Respectfully submitted.

CHARLES FAHY,
Acting Solicitor General.

ROBERT B. WATTS,
General Counsel,
National Labor Relations Board.

OCTOBER 1941.

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[2] In *International Association of Machinists* v. *National Labor Relations Board*, 311 U. S. 72, the Machinists union contended that even though the employer's assistance contributed to the obtaining of a majority, a closed-shop contract could not be abrogated in the absence of proof and findings that the employer's assistance served to maintain that majority until the time the contract was made. The Court, in holding that the findings and evidence in that case established a continued absence of free choice (p. 88), at least by implication rejected the argument that the proviso related only to a majority.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

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NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

ELECTRIC VACUUM CLEANER COMPANY, INC.; INTERNATIONAL MOLDERS' UNION OF NORTH AMERICA, LOCAL 430; PATTERN MAKERS' ASSOCIATION OF CLEVELAND AND VICINITY; INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT NO. 54; METAL POLISHERS' INTERNATIONAL UNION, LOCAL NO. 3; AND FEDERAL LABOR UNION NO. 18,907,

Respondents.

MEMORANDUM FOR RESPONDENTS OPPOSING PETITION FOR WRIT OF CERTIORARI BY NATIONAL LABOR RELATIONS BOARD.

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MEMORANDUM FOR RESPONDENTS OPPOSING PETITION FOR WRIT OF CERTIORARI BY NATIONAL LABOR RELATIONS BOARD.

The statements concerning "Opinions Below", "Jurisdiction" and "Statute Involved" are set forth in the petition of the National Labor Relations Board and are incorporated herein by reference.

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Statement.

The statement of the case as set forth by the Board in its petition is a somewhat inadequate, statement of the facts and of the proceedings in this case.

The first contract entered into on June 22, 1935 (a date preceeding the enactment of the National Labor Relations Act), between the Company and the five American Federation of Labor affiliates was entered into in settlement of a lengthy strike against the Company (R. 159-160). The proof of majority submitted to the Company at the time of both the 1935 and 1936 contracts was something more than the mere ordinary union authorization card. The proof consisted of formal powers of attorney designating the American Federation of Labor as exclusive bargaining agent for one year and conferring on such union full and exclusive power and authority to act for each such employee in all matters respecting his working conditions. Such power of attorney was declared to be irrevocable and to be in full force for one year, and thereafter subject to withdrawal upon thirty days' notice in writing (R. 161, 865). A copy of the typical power of attorney is inserted in the footnote below.[1] The powers of attorney

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[1] "AUTHORIZATION FOR REPRESENTATION

"I, the undersigned, employee of the Electric Vacuum Cleaner Co. employed as Assembler hereby authorize my

(Craft—Mechanic, Helper, or Apprentice)

Craft Organization, Affiliated with the American Federation of Labor

	Membership Fee
Metal Polishers International Union	$3.50
International Association of Machinists	3.75 and $5.00
International Molders Union of North America	3.00 and 5.00
Pattern Makers Association	5.00 and 7.00
Federal Labor Union	2.50

to represent me and, in my behalf, to negotiate and conclude all agreements as to hours of labor, wages, and other employment conditions. I also authorize the Company to deduct, within thirty days, from wages due, the prevailing initiation or reinstatement fee of the organization as indicated

were signed by 608 out of a total of 799 employees in June, 1935, and 771 employees out of a total of 809 in July, 1936. Each of such employees was an active dues-paying member of the American Federation of Labor (R. 160).

In both instances the Company objected to a completely closed-shop contract *only* because such a contract would require the few employees who did not belong to the American Federation of Labor unions to *become members, perhaps* against their will. Accordingly, under the oral agreement, it was agreed that these "old" employees (*i. e.*, those who had never belonged to the union) would not be required to join, but that new employees would be required to join, it being clearly understood that old employees who were members would remain members (R. 160, 264, 265, 291, 688). Accordingly, the Board's statement that only new employees were obliged to become members, and that old employees who were members were not obliged to remain members under the oral contract, is incorrect. Obviously, the union would only give up as much of its demand for a closed shop as it had to; it would not gratuitously forego a requirement as to membership to which the Company had made no objection, the only contention between the parties being as to the status of the old employees who had never joined or belonged to the A. F. of L. organizations. The uncontradicted evidence appearing in the record at the foregoing record references conclusively discloses the intent and extent of the oral agreement.

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hereon and transmit same to the authorized representative of the organization.

The full power and authority to act for the undersigned as described herein supersedes any power or authority heretofore given to any person or organization to represent me, and shall remain in full force and effect for one year from date and thereafter, subject to thirty (30) days written notice of my desire to withdraw such power and authority to act for me in the matters referred to herein.

Signature of employee.
(Union Label.)

All the union representatives were notified of the terms of the contract and, in addition, it was publicly announced by notices on plant bulletin boards that it was the intention of the company to maintain a peaceful and friendly relationship under its contracts, and that any attempt to disturb such peaceful and friendly relationship would be considered as contrary to the best interests of the Company and would be punishable by discharge (R. 291). The evidence in this respect is uncontradicted, and in the light of it the Board's characterization of the oral agreement as "secret" is hardly understandable.

The harmonious relationship between the Company and its employees resulting from the collective bargaining contracts continued for one year and nine months, at which time, in March, 1937—three months before the expiration of the 1936 contract and of the individual powers of attorney—the C. I. O. made its advent in the plant and signed up some sixty employees. It was at this time that the alleged unfair practices, consisting solely of allegedly rendering "assistance" to the A. F. of L. affiliates, took place. The American Federation of Labor, asserting its rights under its existing contract and seeking to protect and preserve such contract and to maintain harmonious relationships in the plant, insisted that various employees in the machine shop become members of the Federation (R. 752). At no time did the Company threaten any employee with discharge for refusing to join the American Federation of Labor (R. 524). Following a short-lived sit-down strike by one hundred C. I. O. sympathizers in the machine shop, occurring at the end of March, the American Federation of Labor representatives demanded that the company close the plant temporarily while an attempt could be made to straighten out the situation, threatening a strike if the request was not complied with (R. 186, 187).

On April 3rd, the American Federation of Labor entered into a supplemental agreement with the Company, requiring *all* employees to become union members. At the time the April 3rd agreement was entered into, the Company had received no notice from the C. I. O. that it even claimed to represent a majority of its employees (R. 204), and it is undisputed that no employee who had signed any one of the powers of attorney had notified either the union or the Company of an intention to withdraw his commitment. Pursuant to the terms of the April 3rd contract, the Company refused employment to 24 of the employees. The C. I. O. filed charges and hearings were ordered, culminating in the decision of the Board now under review.

Reasons for Denying the Writ.

The Board poses as the most important reason for granting the writ of certiorari the question of whether the activities of the Company carried on at the request of the American Federation of Labor and constituting the alleged unfair practices of rendering assistance were justified under a contract which provided merely for exclusive recognition. The case, however, was not decided upon that basis by the court below. Rather, the case was decided upon three different theories, each one of which alone is sufficient to support the court's decision setting aside the order of the Board.

1. The court below found that the contract made in 1936 not only required new employees to become members, but obliged all employees who were members at the time the contract was entered into to remain members. Thus, the contract was a closed-shop contract as to all except 38 of the employees the second year and 67 of the employees the first year, and "assistance" rendered under such circumstances

would not constitute a violation of the Act. The court stated in this respect as follows:

> "It [the oral contract] provided that in the future all new employees, after a probationary period of two weeks, should be compelled to join the appropriate craft union of the A. F. of L., but that the old employees, of whom some sixty-seven did not wish to join the A. F. of L., should not be compelled to do so. The respondent published notice of the contract throughout the plant and at the same time notified the employees that any one who did anything to disturb the peaceful and friendly relationship under the contract would be considered as working against the best interests of the company and subject to discharge."

Further:

> "In the instant case it was reasonable that these men should agree to exempt from the requirement of union membership the older men whose unwillingness to join the A. F. of L. was preventing the settlement of the strike initiated by the Mechanics Educational Society, and the exemption in no way affects the legality of the agreement."

Finally, the court stated:

> "In order to reach its conclusions, the Board ignored the fact that the contract of 1936, found by it to be valid under the statute, granted recognition as exclusive collective bargaining agent to the A. F. of L. and required its members to maintain and perform the contract for one year. It was an implied term of the contract that *every member of the organization* would cooperate in the enforcement of the agreement made between respondent and the A. F. of L. affiliates which he had expressly authorized to represent him in these matters, and would not take action looking toward the violation of the contract. The C. I. O. agitation, the sit-down strike, the closing of the plant, and the mak-

ing of the closed shop agreement of May, 1937, all occurred before this year had expired."

The evidence clearly supports the court's finding as to the requirements of union membership under the oral contract (see page 4, *supra*).

Thus, this Court is presented at most with a mere question of contract construction not involving a conflict in decisions or a failure to apply applicable rules of contract construction; and the question of the legality of acts of assistance under an exclusive, as distinguished from a closed-shop, contract is not before this Court.

2. In addition, the court below predicated its decision that the employer's acts were valid under the circumstances not only on what it found the oral contract to be, but also on the individual powers of attorney signed by all but 38 of the employees granting the American Federation of Labor complete authority to represent for a definite and reasonable period of one year, none of which powers of attorney had been revoked in the manner provided for. Thus, the court stated in its decision:

> "The legal conclusion made by the Board that the members of the A. F. of L., after the 1935 and 1936 contracts were executed, were free to abandon such membership at will, when considered in the light of the authorizations signed by the men and the total failure to file withdrawals in accordance therewith, is plainly erroneous. So far as the understanding of the parties illuminates the meaning of the obligation, it is that the men were bound for the period defined in the authorizations. There was no testimony to the contrary."

Further:

> "At the time that some of the old employees called a C. I. O. organizer into the plant, all but 38 of the employees working when the 1936 contract was ex-

ecuted had signed written authorizations, as hereinbefore described. These authorizations, running for a term of one year and thereafter, could be withdrawn upon thirty days written notice; but the record presents no such withdrawal. The term of one year was reasonable and the authorizations were in every respect legal. Signing the authorizations entitled the men to the benefits of union membership, including the benefits of the contract between the respondent and the affiliated unions, and they in turn were bound thereby during the term of the authorizations. They were both ethically and legally bound not to disrupt the contract. It follows that any employees who were members of the A. F. of L., whether old or new men, violated the contract when they tried to bring in a rival union, and became rightfully subject to discharge."

Neither in its decision nor in its briefs before the court below did the Board challenge the validity of these individual commitments under the Act or of their power to bind the individuals not to change affiliation for the reasonable period set forth in the commitments without following the procedure for withdrawing such authorization as provided therein. The objective of securing stability through collective bargaining relationships clearly require adherence to reasonable commitments as to affiliation and choice of bargaining agent when freely entered into. The Board itself has affirmed this principle. (*Ansley Radio Corporation*, 18 N. L. R. B. No. 108; *Douglas & Lomason Co.*, 34 N. L. R. B. No. 8. (August, 1941.) See also *Peninsula & Occidental S. S. Co.* v. *National Labor Relations Board*, 98 F. (2d) 41; and *Matter of Triboro Coach Corporation* (N. Y. Court of Appeals and Errors), decided July 29, 1941, L. R. R. Vol. 8, p. 845.) Particularly is this true where there is ample consideration for the commitments and a change in position is caused thereby. The individual employees received the benefits of the collective bargaining contract

obtained by their authorized representative, and the employer, relying on such commitments, undertook acts which are now branded as unfair practices.

3. Finally, the alleged illegal activities of the employer, including the making of the April 3rd closed-shop agreement, took place at a time when the American Federation of Labor represented an uncoerced majority of the Company's employees, which majority admittedly had been neither *obtained* nor *maintained* by any assistance or other unfair practice on the part of the Company. The Board made no charge and no finding that at any time during this entire period the American Federation of Labor did not represent an uncoerced majority of the employees at the plant, or a majority which had been obtained or maintained by any employer assistance. Accordingly, in the absence of such charge and such specific findings, the act of the employer in entering into the closed-shop contract of April 3rd was proper under Section 8(3) of the Act, Section 8(3) requiring merely that the contract cover an appropriate unit, and that the contracting union represent an uncoerced majority in such unit. (*International Association of Machinists* v. *National Labor Relations Board*, 311 U. S. 72.) A construction which would deny a labor organization receiving *any* assistance, regardless of whether such assistance operated to obtain or maintain the necessary majority, would obviously be absurd and in derogation of the cardinal purposes of the Act—to promote the obtaining of collective bargaining contracts by valid majority representatives.

Accordingly, it is readily apparent that the fundamental reason advanced by the Board as requiring the granting of the writ—the question of whether a mere exclusive recognition contract legalizes the practices alleged to be unfair—was not passed upon by the court below. On the contrary, there are three separate and distinct grounds supporting

the court's decision and supporting its reversal of the Board's order. These are, in summary: (1) the alleged unfair activities (consisting only of allegedly giving assistance to the A. F. of L. affiliates) occurred during the existence of a contract requiring all but 38 of the Company's employees to become or remain members of the American Federation of Labor unions; (2) the alleged unfair practices occurred during the terms of valid, individual powers of attorney authorizing the A. F. of L. unions to act as exclusive representative in all their employment relationships, signed by all but 38 of the employees; (3) the Board failed to charge or find that the majority asserted by the A. F. of L. unions in support of the April 3rd closed-shop contract had either been *obtained* or *maintained* by any unfair practice on the part of the employer, and the Board made no finding that on that date the American Federation of Labor did not represent an uncoerced majority.

WHEREFORE, it is respectfully submitted that the petition for a writ of certiorari prayed for by the National Labor Relations Board be denied.

Respectfully submitted,

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Dated this 30th day of September, 1941.

FEB 3 1942

No. 588

In the Supreme Court of the United States

OCTOBER TERM, 1941

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

ELECTRIC VACUUM CLEANER COMPANY, INC.; INTERNATIONAL MOLDERS' UNION OF NORTH AMERICA, LOCAL 430; PATTERN MAKERS' ASSOCIATION OF CLEVELAND AND VICINITY; INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT NO. 54; METAL POLISHERS' INTERNATIONAL UNION, LOCAL NO. 3; AND FEDERAL LABOR UNION NO. 18,907

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The opinion of the Circuit Court of Appeals (R. 867–875) is reported in 120 F. (2d) 611. The findings of fact, conclusions of law, and order of the Board (R. 150–217) are reported in 18 N. L. R. B. 591.

JURISDICTION

The decree of the Circuit Court of Appeals was entered on June 6, 1941 (R. 866). The petition for a writ of certiorari was filed on September 6, 1941, and was granted on October 20, 1941. The jurisdiction of this Court rests upon Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and upon Section 10 (e) of the National Labor Relations Act.

QUESTIONS PRESENTED

The Board found that the Company in 1935 and 1936 made one year written agreements with a labor union, accompanied by oral and undisclosed agreements that employees subsequently hired would be required to join that union. The Company in 1937, shortly prior to the expiration of the 1936 agreements, sought by coercive and discriminatory acts to force employees not covered by the oral agreement to join or adhere to the union and to prevent them from joining a rival union. After locking out its employees to aid the first union, the Company reopened under a full closed-shop contract with it, and pursuant thereto refused to reinstate certain employees. The questions are:

1. Whether the Board's foregoing findings of fact were supported by substantial evidence.

2. Whether coercion of old employees not covered by the oral agreements was lawful (a) because new employees were required by the oral agree-

ments to become members of the contracting union, or (b) because the coercion was requested by the contracting union.

3. Whether the full closed-shop contract of 1937 was invalid because of the prior assistance despite absence of a showing that the assistance caused a majority of the employees to join or adhere to the assisted union.

4. Whether the old employees who were members of the contracting union at the time of the 1935 and 1936 collective agreements were required to retain their membership during the life of the collective agreements under penalty of discharge.

5. Whether, if the full closed-shop contract of 1937 was invalid, the discharges of new employees covered by the oral agreements of 1935 and 1936 were nevertheless lawful. The discharges would be lawful only if both of the following questions were answered in the affirmative:

(a) Whether the Board's finding that the oral agreements were abandoned prior to the discharges is unsupported by substantial evidence; and

(b) Whether employees may be discharged for failure to comply with a compulsory membership requirement in a collective agreement not disclosed to them.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act are set forth in the Appendix.

STATEMENT

Upon proceedings pursuant to Section 10 of the National Labor Relations Act, in which five unions affiliated with the American Federation of Labor (hereafter called the Affiliates)[1] received notice and were permitted to intervene (R. 153), the Board on December 21, 1939, issued its findings of fact, conclusions of law, and order (R. 150–217).[2] The Board's evidentiary findings together with the supporting evidence are set forth in the Argument. The bare outline of the findings is as follows:

On June 22, 1935, the Electric Vacuum Cleaner Company (hereafter called the Company) and the

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[1] International Molders' Union of North America, Local 430; Pattern Makers' Association of Cleveland and Vicinity; International Association of Machinists, District No. 54; Metal Polishers' International Union, Local No. 3; and Federal Labor Union No. 18,907.

[2] After the hearing, the Board transferred the proceedings to itself and no trial examiner's report was issued (R. 47). On July 7, 1938, the Board issued findings of fact, conclusions of law, and an order (R. 48–70). On April 11, 1939, after due notice to the parties (R. 80–81) and without objection by them (R. 88), the Board vacated and set aside these findings of fact, conclusions of law, and order (R. 82), and on June 21, 1939, issued an order directing issuance of proposed findings of fact, proposed conclusions of law, and a proposed order (R. 83). On ~~July 7, 1938~~, these were issued by the Board (R. 84–137). After exceptions and briefs were filed by the Company and the Affiliates and oral argument held (R. 137–149, 155), the Board on December 21, 1939, entered the findings of fact, conclusions of law, and order now before the Court (R. 150–217).

Affiliates, representing a majority of the Company's employees, entered into a one-year written collective bargaining agreement (R. 160). As a supplement to the written contract, the Company orally agreed that all new employees, i. e., those hired after the date of the contract,[1] should be required to join the appropriate A. F. of L. affiliate (R. 160, 161–164, 178, 197). This oral agreement was not revealed to the employees (R. 161, 162, 164–166). On July 6, 1936, when the Affiliates represented an increased majority of the employees, the written and oral agreements were extended to June 23, 1937, but again the employees were not informed of the oral agreement (R. 161, 177–178, 185, 197). During March 1937, a group of employees began to organize a local of the United Electrical and Radio Workers of America (hereafter called the United), affiliated with the C. I. O. (R. 168–169, 170, 180, 188–189). The Company thereupon attempted to forestall the organization of its plant by the United and by unfair labor practices assisted the Affiliates. It compelled a number of old employees to join or retain membership in the Affiliates under penalty of discharge; it discharged an old employee because of his refusal to join the Affiliates; it locked out

[1] We refer, as does the Board's decision, to those in the Company's employ on June 22, 1935, when the contract was entered into, as "old" employees, and to the persons hired thereafter as "new" employees.

all its employees for two weeks to enable the Affiliates to cement their ranks and prevent defections to the United; and it informed its employees that under the July 1936 agreements all employees were required to be members of the Affiliates, which was not true (R. 166–189, 192–193). Before reopening the plant, the Company and the Affiliates abandoned the July 1936 agreements and on April 3, 1937, entered into an oral full closed-shop contract, which was subsequently reduced to writing, requiring membership in the Affiliates as a condition of employment (R. 189–194, 196, 199, 206). In conformance with the new closed-shop contract, the Company denied employment to 24 employees who had failed to obtain approval of, or to join, the Affiliates (R. 190–191, 196–200, 204).

The Board found that by these actions the Company interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed by Section 7 of the Act, thereby violating Section 8 (1); that because of the antecedent assistance rendered to the Affiliates, the 1937 closed-shop contract was illegal under the proviso to Section 8 (3) of the Act; and that the refusal to reemploy the 24 employees in accordance with the closed-shop contract was therefore discriminatory and in violation of Section 8 (1) and (3) of the Act (R. 177–179, 187–188, 194–196, 197–200, 202, 206–207, 208, 211).

The Board's order required the Company (1) to cease and desist from its unfair labor practices,

from giving effect to the closed-shop provision of its contract with the Affiliates, and from giving effect to any provision of that contract should the Board certify another labor organization as exclusive bargaining representative; (2) to offer reinstatement with back pay to the employees discriminated against; and (3) to post notices (R. 211–217).

Thereafter the Board petitioned the court below for enforcement of its order (R. 1–9).[4] On June 6, 1941, the court handed down its opinion and entered a decree setting aside the order (R. 866–875).[5] On October 20, 1941, this Court granted the petition for a writ of certiorari.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In holding that an employer who has entered into a collective contract containing closed-shop provisions applicable to only some employees may assist the contracting union by coercion of other employees.

2. In failing to hold that the Company by coercing old employees assisted the contracting union by unfair labor practices.

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[4] A motion of the Affiliates to intervene before the court was granted (R. 866).

[5] The back-pay provisions of the Board's order provided also for reimbursement of government relief agencies. The Board does not request reversal of the decree insofar as it denies enforcement of that portion of the order. *Republic Steel Corp.* v. *National Labor Relations Board*, 311 U. S. 7.

3. In holding that the full closed-shop contract thereafter made with the assisted union was valid.

4. In holding that members of an exclusive bargaining representative are obligated, under penalty of discharge, to retain membership, although the collective agreement with the employer contains no provision requiring retention of membership.

5. In holding that notice of an unrevealed oral closed-shop agreement can be imputed to employees covered by it so as to justify discharge of employees who fail to comply with its terms.

6. In failing to sustain the Board's finding that the Company discriminated against 24 employees in violation of Section 8 (3) and (1).

7. In refusing to enforce the Board's order in full, except for the work-relief provisions.

SUMMARY OF ARGUMENT

A. The Company and the Affiliates entered into a written collective-bargaining agreement, accompanied by an oral agreement requiring new employees to become members of the Affiliates, but not requiring old employees either to become or remain members of the Affiliates. The oral agreement was not disclosed to the employees. Shortly before the expiration date of the agreements a group of employees undertook the organization of a local of the United. The Company thereupon took action to compel all employees, old and new, to become members of the Affiliates and to forego

the United. Among other measures the Company resorted to threats of discharge, discharge, and lock-out. Thereafter, the Company and the Affiliates entered into a full closed-shop agreement requiring all employees, old and new, to become members of the Affiliates, and pursuant to that contract refused to reinstate 24 employees.

B. Because of the assistance which the Company had rendered to the Affiliates the full closed-shop contract was invalid. Section 8 (3). There is no merit in the Affiliates' contention that the assistance was proper because rendered at the request of the existing collective-bargaining representative. Both the Act and its legislative history preclude that view. Equally invalid is the holding of the court below that because the oral agreement required new employees to become members of the Affiliates, the Company was free to impose compulsory membership requirements on old employees. The court's theory that a contract which *pro tanto,* i. e. with respect to the new employees, falls within the proviso of Section 8 (3) confers a license on an employer to coerce other employees in order to avoid inter-union rivalry is without basis.

Nor is there merit in the contention advanced by the Affiliates that a closed-shop contract is valid despite employer assistance in the absence of a showing that such assistance caused the adherence of a majority of the employees. The language of

the proviso of Section 8 (3) clearly prohibits closed-shop contracts with unions assisted by any unfair labor practices; there is no requirement that the assistance must effect a majority. On the contrary the proviso plainly imposes two separate prerequisites to the validity of a closed-shop agreement: (1) that the contracting union be the majority representative; and (2) that the organization be unassisted by unfair labor practices. See S. Rep. No. 573, 74th Cong., 1st Sess., p. 12.

C. Since the full closed-shop contract was invalid, the Company's refusal to reinstate 24 employees pursuant to the contract was discriminatory in violation of Section 8 (3) and (1) of the Act. The holding of the court below that the discharge of certain of the old employees was independently justified because they had violated the original collective agreement by failing to maintain their membership in the Affiliates is clearly unsound. Since the collective agreement imposed no membership requirement on old employees, the court's holding could not have been bottomed on any express term of the collective agreement. Nor can the holding that an undertaking to maintain membership is inherent in every collective agreement be sustained. To adopt a rule implying that every collective agreement includes a subsidiary agreement by the members of the contracting union to maintain their membership in that union would gravely limit the em-

ployees' freedom to choose their representatives, guaranteed by the Act.

The refusal to reinstate the new employees was also discriminatory. The refusal cannot be justified on the basis of the earlier oral agreement for two reasons: (1) the Board found upon substantial evidence that the oral agreement had been abandoned by the parties when the full closed-shop contract was made; and (2) even had the oral agreement not been abandoned, the Company's failure to inform the employees of its existence deprived the Company of the right to discharge employees for failure to comply with its terms.

ARGUMENT

THE COURT BELOW ERRED IN SETTING ASIDE THE BOARD'S FINDING THAT THE COMPANY VIOLATED SECTION 8 (1) AND (3) OF THE ACT

A. THE BOARD'S FINDINGS OF FACT WERE SUPPORTED BY SUBSTANTIAL EVIDENCE

Concerning the presence of substantial evidence to support most of the Board's findings of fact there is no dispute.[9] While the court below con-

[9] See the Statements in the Company's (pp. 2–5) and the Affiliates' (pp. 2–5) briefs in opposition to the petition for certiorari. The respondents do, however, question the sufficiency of the evidence to support the Board's findings that (1) the employees had received no notice of the oral agreements of 1935 and 1936; and (2) the oral agreements of 1935 and 1936 did not restrict the old employees in their choice of unions. These issues we discuss below, pp. 13–16.

cluded that the Company had not violated the Act, its decision was not based on a holding that supporting evidence was lacking (R. 867–875). In these circumstances, we shall limit ourselves to a brief recital of the facts as found by the Board and as shown by the supporting evidence. Cf. *National Labor Relations Board* v. *Falk Corp.*, 308 U. S. 453, 461; *H. J. Heinz Co.* v. *National Labor Relations Board*, 311 U. S. 514, 518.[1]

The execution of collective agreements of June 22, 1935, and July 6, 1936.—On June 22, 1935, after negotiations, the Company entered into a written contract for one year with the Affiliates, granting exclusive recognition to the Affiliates and covering the terms and conditions of employment (R. 160; R. 237–238, 259, 748–749, 810–811, 845–848). Before signing the contract the Company was presented with membership cards in the Affiliates signed by 608 out of a total of 799 employees (R. 160; R. 253, 259, 291, 748, 809–810, 865). Although the Affiliates had requested a closed shop, the Company refused to accede to the request, but orally agreed with the Affiliates that all new employees, i. e., those hired after the date of the contract, should be required to join the appropriate A. F. of L. affiliate after a work-probation period of two weeks (R. 160; R. 264–265, 283–284, 544, 688, 721–722).

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[1] In the statement which follows, the references preceding the semicolons are to the Board's findings and the succeeding references are to the supporting evidence.

On July 6, 1936, the written and oral agreements were renewed until June 23, 1937 (R. 161; Bd. Exh. 7, R. 238, 265, 686, 689, 741–742). The Affiliates at the time represented all but 38 of the workers (R. 161; R. 253).

Notice of the verbal agreements of June 22, 1935, and July 6, 1936; applicability to old employees.— The Board found that the supplementary oral agreements requiring new employees to join the Affiliates were not revealed to the employees (R. 161, 162, 164–166, 177–178, 185, 199).[8] Although respondents question this finding (*supra*, p. 11, n. 6), it is clearly supported by substantial evidence. The only new employee called by the Affiliates as a witness on the issue of notice testified that nothing had ever been said to him about a requirement that he join the Affiliates, and that although he had been hired in July 1935, he became a member of the Affiliates only in April 1937 (R. 795). Gordon, a business agent of one of the Affiliates, testified that in 1937 the new employees "doubted the custom" of requiring them to join the Affiliates and said they "didn't know anything about" the oral agreement (R. 753); other witnesses for the Affiliates testified only to a general "understanding" (R. 785, 803). The Board expressly rejected (R. 165–166) the testimony of

[8] The Board analysed the evidence on this issue in detail and made express subsidiary findings concerning the relevant testimony. See R. 164–166.

Paulus, the Company's plant superintendent (R. 688–689), and Wilson, the Company's vice president (R. 283–284), that the foremen had been instructed to notify new employees of the requirement and that the foremen had so notified those employees. This it was warranted in doing: the Company called no foremen or new employees to substantiate the testimony (R. 166); new and old employees called by the Board testified that new employees were not notified (R. 447–448, 471, 543–544, 666–667, 670); and, finally, Tuteur, the Company's president, expressly stated in a letter to the Board's Regional Director, written June 12, 1936, that the information Tuteur was imparting concerning the oral agreement was "in confidence" (R. 741–742). In these circumstances, the Board was warranted in its conclusion that the new employees were not notified of the oral agreement.

The Board also found that the oral agreements did not apply to the old employees at all (R. 160, 161–164, 178, 197). In their respective briefs in opposition to the petition for certiorari, however, the Company (pp. 3, 6) and the Affiliates (p. 3) contend, as they did before the Board, that the oral agreements required old employees who were members of the Affiliates to retain their membership. The Board's finding to the contrary* is amply supported. Muelhoeffer and Gordon, busi-

*The Board's analysis of the evidence on this issue and its subsidiary findings are at R. 161–164.

ness agents of one of the Affiliates, who testified to the 1935 negotiations, stated only that the oral agreement covered new employees (R. 750, 775, 811, 829). Paulus testified that there was no requirement relating to old employees (R. 688). Tuteur in his letter (*supra*, p. 14), and Wilson, in his testimony, in describing the agreements (R. 283–284) made no mention of old employees. Keehl, an old employee who had been a member of the Affiliates but who had fallen six months behind in his dues, asked Waterbury, respondent's accountant actively handling labor relations, whether he was required to belong to the Affiliates. Waterbury advised Keehl to pay his dues but said nothing about a requirement that Keehl remain a member (R. 492–493). Finally, the Board expressly rejected (R. 163–164) the Company's contention that a notice which it posted in 1935 advising the employees that they "would be considered as working against the interests of the Company and as such subject to discharge" if they "did anything to disturb the peaceful and friendly relationship" between the Company and the Affiliates (R. 291) embodied an agreement requiring the old employees to retain their membership in the Affiliates.[10] Plainly the

[10] Theodore Vitosky, an old employee, testified that he stopped paying dues to the Affiliates, yet during the entire life of the agreements and until March 1937, nothing was ever said to him about his defection (R. 302–303, 316). Mike Smith and Clyde Boyes, both old employees, testified to the same effect (R. 348–349, 512).

Board was justified in finding that this "caveat did not bring the old employees within the terms of the oral agreement" (R. 164). And equally plainly, in the complete absence of evidence in the record of a requirement that old employees who were members of the Affiliates retain their membership, the Board's conclusion on this issue was warranted.[11]

The Company's interference with the United campaign and its assistance to the Affiliates.— During March 1937, about three months prior to the termination date of the renewed contracts, a number of the Company's employees began to organize a local of the United, a C. I. O. affiliate; on March 17, about 60 employees met with a United organizer, joined the United, and the next day distributed United application cards among the other employees (R. 168–169, 170, 180; R. 379–382, 429–430, 538). During the next two weeks a large number of employees attended meetings of United. Officers were elected at a meeting on March 19, many of those attending a meeting on March 28 signified their resignation from the Affiliates, and the local was chartered by United on April 1. (R. 188–189; R. 340–341, 389-

[11] In its Proposed Findings of Fact, the Board found that the oral agreement related only to new, not old, employees (R. 94–97). The Affiliates did not except to this finding (R. 146), and at the oral argument before the Board did not question the finding (R. 161, n. 7).

391, 399–402, 438–439, 475–476, 610–611, 617, 660–662, 843, 859–860, 863–864.)

Meanwhile, beginning on March 16, the Company and the Affiliates took joint action to frustrate the United drive, and to compel all employees to join the Affiliates. On March 16, 17, and 18, Company executives including Vice-President Wilson and Plant Superintendent Paulus summoned groups of old employees and, in the presence of ranking A. F. of L. officials, directed the employees to join or reaffirm their membership in the Affiliates under penalty of discharge. A number of the men promptly signed Affiliate cards before these Company and Affiliate officials. (R. 166–178, 180; R. 305–308, 513–518, 526–529, 685, 690–691, 699, 733–734.) When Ramsey, an old employee who was not a member of the Affiliates, refused to join, the Company discharged him forthwith (R. 167, 168, 172–177; R. 268, 525–529, 533–534, 691, 699–700).[12]

In protest against Ramsey's discharge, the machine shop employees engaged in a one-day sit-down strike which was settled when the Company, with the consent of the Affiliates, agreed to reinstate Ramsey and to allow its employees "to have

[12] On March 17, the A. F. of L. officials proposed a strike to Vice-President Wilson, but Wilson assured them that a strike was unnecessary since "he was going to make them join the American Federation of Labor Union, and if they don't he would fire one or two so the rest of them will join" (R. 171–172, 179; R. 565, cf. 516, 685, 268).

the right to join any Union of their own free will" (R. 183, 173–174, 180–185; R. 267–268, 281–282, 293, 383–386, 431–438, 484, 496, 857).

When the strike ended on Friday, March 19, the employees expected to return to work as usual on the next workday, Monday, March 22 (R. 184; R. 438–439, 484, 496). The Company similarly intended to reopen on that day (R. 186; R. 279-280). On Saturday, March 20, however, the Company inserted a notice in the local newspapers announcing that, at the request of the Affiliates, the plant would be closed on Monday (R. 185–188; R. 272–273, 856). The notice was, as Vice-President Wilson testified, the result of a conference between the Company and the Affiliates at which the Affiliates had demanded the shut-down so that they "might go over the situation and get their lines in order," and thereby defeat the effort of the United to "proselyte members" among the employees (R. 186–187; R. 255–256, 273).

After a shut-down of two weeks, the plant reopened on Monday, April 5; on the preceding Saturday and Sunday, the Company had inserted notices in the local newspapers stating that under its 1936 contract it was obligated to "employ only persons affiliated with" the Affiliates, and that on resumption of operations "only those employees who are members of the crafts under contract with us will be employed" (R. 189, 192–193; R. 852). These notices misrepresented the terms of the

1936 agreement and were deliberately intended to conceal the fact that on April 3, two days before reopening, the Company and the Affiliates had abandoned the 1936 contract and orally agreed upon a full closed-shop contract applicable to old, as well as new, employees (R. 192–194, 189–191, 199, 201, 206; R. 253–255, 726, 813, 828).

The Company's discrimination pursuant to the contract of April 3, 1937.—Pursuant to the closed-shop contract of April 3, the Company refused to permit any employee to return to work who did not present a clearance card from the Affiliates (R. 190–191, 196, 197–198, 200, 204; R. 864, 252, 276–277, 332–333, 342, 353, 368, 479, 726, 813). Twenty-four members of the United, including three old employees who had never been members of the Affiliates,[13] 16 old employees who had been members of the Affiliates,[14] and five new employees,[15] were thereby discriminatorily excluded from employment (R. 190, 197–200).[16] On May 20, the oral closed-shop contract of April 3 was replaced by a similar one-year written contract requiring all employees of the Company to be members of the Affiliates (R. 196; R. 39, 41–43, 853).

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[13] R. 455–457, 483, 373–375.

[14] R. 310, 324–325, 340, 349, 364–365, 475, 492–493, 537, 560–561, 585–586, 601–602, 610, 617, 622, 630, 635–636.

[15] R. 447–448, 462–464, 554–555, 664, 668–670.

[16] Some were refused clearance cards by the Affiliates because of their activities on behalf of the United (R. 311–312, 328–329, 350, 466–467, 541–542, 570–571, 587–588,

B. ON THESE FACTS THE BOARD PROPERLY CONCLUDED THAT COMPANY ASSISTED THE AFFILIATES BY CONDUCT WHICH TERFERED WITH, RESTRAINED, AND COERCED ITS EMPLOY CONTRARY TO SECTION 8 (1) OF THE ACT; THAT CONSEQUEN THE SUBSEQUENT CLOSED-SHOP CONTRACT WITH THE AFF ATES WAS INVALID; AND THAT THE DISCRIMINATION IN PLOYMENT PURSUANT TO THE CONTRACT VIOLATED SECTIO (3) AND (1) OF THE ACT

The foregoing facts clearly support the Boar ultimate findings (1) that commencing on Ma 16, 1937, the Company assisted the Affiliates conduct which interfered with, restrained, and erced its employees in the exercise of the rig guaranteed in Section 7 of the Act, contrary Section 8 (1) (R. 177–179, 187–188, 196, 206, 21 (2) that consequently the subsequent closed-sh contract with the Affiliates of April 3, 1937, duced to writing on May 20, 1937, was invalid u der Section 8 (3) of the Act (R. 194–196, 2 206–207); and (3) that the denials of reemplo ment to 24 employees pursuant to the closed-sh contract were discriminatory in violation of Secti 8 (3) and (1) of the Act (R. 197–200, 208, 21 We shall consider these findings *seriatim*.

605, 613, 618–619, 631–632, 637); others made persistent tempts to get clearance cards, but after being shunted fr one A. F. of L. representative to another, abandoned furth efforts (R. 341–342, 365–368, 485–487, 627–628); a few ceived clearance cards after persistent attempts, only to denied employment on the ground that their jobs had in t meanwhile been filled (R. 449–452, 458–461, 479–480, 55 557).

1. *On and after March 16, 1937, the Company assisted the Affiliates by conduct which interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, contrary to Section 8 (1)*

It is apparent from the Board's evidentiary findings, supported by the substantial evidence above cited, that beginning on March 16, 1937, the Company engaged in conduct which assisted the Affiliates and interfered with, restrained, and coerced the employees in the exercise of their rights to self-organization guaranteed by Section 7 of the Act. Among the unfair labor practices in which the Company engaged were the following:

(a) On March 16, 17, and 18, 1937, the Company through its highest officials summoned its old employees and threatened them with discharge unless they joined or reaffirmed membership in the Affiliates (*supra*, p. 17). Since the existing written and oral collective bargaining agreements of July 1936 did not require old employees to be or remain members of the Affiliates (*supra*, pp. 14–16), and since, therefore, they were entitled to full freedom not to join or adhere to the Affiliates, these threats of discharge in order to compel membership in the Affiliates and to forestall the United constituted assistance to the Affiliates and coercion of the employees. *H. J. Heinz Co.* v. *National Labor Relations Board*, 311 U. S. 514, 518, 520; *International Association of Machinists* v. *Na-*

tional Labor Relations Board, 311 U. S. 72, 76–77; *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.,* 303 U. S. 261, 270; *National Labor Relations Board* v. *Pacific Greyhound Lines, Inc.,* 303 U. S. 272, 274; *National Labor Relations Board* v. *Friedman-Harry Marks Clothing Co.,* 301 U. S. 58, 75.

(b) On March 18 the Company discharged Ramsey because he refused to join the Affiliates, although Ramsey, as an old employee, was under no obligation to join (*supra,* p. 17). Ramsey's discharge was, of course, direct interference with the rights of self-organization, and constituted unlawful assistance to the Affiliates. *Phelps Dodge Corp.* v. *National Labor Relations Board,* 313 U. S. 177, 183; *National Labor Relations Board* v. *Link-Belt Co.,* 311 U. S. 584, 598, 601; *International Association of Machinists* v. *National Labor Relations Board,* 311 U. S. 72, 77.

(c) For two weeks, from March 22 to April 5, the Company shut down its plant and locked out its employees for the admitted purpose of enabling the Affiliates to cement their ranks and prevent defections to the United (*supra,* p. 18). This lock-out constituted interference with, coercion, and restraint of all employees, old as well as new, and assistance to the Affiliates of the strongest kind.[17]

[17] The shutting down of a plant to deter employees from joining a union which the employer opposes, or, conversely,

(d) On April 3 and 4, 1937, the Company published notices addressed to the employees misrepresenting the July 1936 agreements as full closed-shop agreements requiring all employees, old and new, to be members of the Affiliates as a condition of employment (*supra*, pp. 18–19). Since the July 1936 agreements in fact contained no membership requirement as to old employees, the notices were an obvious interference with the right of old employees to select representatives of their own choosing.

The Board correctly found that in these ways the Company interfered with, restrained, and coerced its employees contrary to Section 8 (1) and assisted the Affiliates prior to entering into the full closed-shop agreement of April 3, 1937.

The Affiliates, however, urged in the court below that the Company's acts of assistance during March and April 1937, if otherwise unlawful, were

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to induce employees to affiliate with a union which the employer favors, is a uniformly recognized violation of the Act. E. g. *Santa Cruz Fruit Packing Co.* v. *National Labor Relations Board*, 303 U. S. 453, affirming 91 F. (2d) 790, 792 (C. C. A. 9); *National Labor Relations Board* v. *Somerset Shoe Co.*, 111 F. (2d) 681, 688–689 (C. C. A. 1); *National Labor Relations Board* v. *Hopwood Retinning Co.*, 98 F. (2d) 97, 100 (C. C. A. 2); *Republic Steel Corp.* v. *National Labor Relations Board*, 107 F. (2d) 472, 477–478 (C. C. A. 3), modified in another respect, 311 U. S. 7; *National Labor Relations Board* v. *Lund*, 103 F. (2d) 815, 818 (C. C. A. 8); *National Labor Relations Board* v. *National Motor Bearing Co.*, 105 F. (2d) 652, 657 (C. C. A. 9).

in this case valid because they were requested by and given to the exclusive bargaining representative under the then existing collective agreements of 1936.[18] Their contention goes much beyond the proposition, with which we agree, that if the conditions set forth in the proviso to Section 8 (3) are satisfied, an employer and a labor union may validly enter into a full closed-shop contract requiring membership in the union on the part of all employees, or into a partially closed-shop contract requiring membership in the union on the part of a portion of the employees; in such case the employer may normally enforce the terms of the contract by discharging those employees who fail to fulfill the contract's requirement that they become or remain members of the union. The Affiliates' contention, however, is that even when the collective agreement contains no requirement of union membership as to any of the employees (or requires union membership only as to a portion of the employees), the employer is entitled to assist the bargaining representative by com-

[18] Brief for the Affiliates in the court below, No. 8748, October Term, 1940, pp. 36-42. The contention was formulated by the Affiliates as follows (p. 36):

"* * * Would not the acts of 'assistance' in the present case, done by the Company at the request of the duly authorized, exclusive bargaining agent of its employees under a valid existing contract, be perfectly legal even though the contract contained no requirement whatsoever as to membership of employees but merely recognized the Union as exclusive agent for a year period? * * *"

pelling employees *not* required by the contract to be union members nevertheless to join the union under penalty of discharge. This contention finds no support in the statute, its legislative history, or in the applicable decisions.

Section 8 (1) of the Act unqualifiedly forbids an employer "to interfere with, restrain, or coerce employees in the exercise of the rights" guaranteed by Section 7. Section 8 (3) broadly proscribes employer discrimination "to encourage * * * membership in *any* labor organization" [italics added], without excepting a labor organization which is the exclusive bargaining representative under an existing collective agreement. The single exception set forth in the proviso to Section 8 (3), is that an employer is permitted to make "an agreement" with an unassisted labor organization which is the majority representative to require membership therein as a condition of employment. Except, however, in the single situation where the employer may thus discriminate pursuant to the terms of a valid closed-shop agreement, the provisions of the Act forbid employer pressure on employees to adhere to a particular labor organization. As the Court held in *International Association of Machinists* v. *National Labor Relations Board*, 311 U. S. 72, 81:

> By § 8 (3) of the Act discrimination upon the basis of union membership constitutes an unfair labor practice unless made because of a valid closed-shop contract.

Could any doubt remain, it is dispelled by the legislative history of the Act. The Senate Committee report makes clear that only through a closed-shop agreement may an employer force his employees to join a labor organization, even when that organization is the representative of a majority of the employees. The report states, (S. Rep. No. 573, 74th Cong., 1st Sess., p. 13):

> Majority rule carries the clear implication that employers shall not interfere with the practical application of the right of employees to bargain collectively through chosen representatives by bargaining with individuals or minority groups in their own behalf, after representatives have been picked by the majority to represent all. *But majority rule, it must be noted, does not imply that any employee can be required to join a union, except through the traditional method of a closed-shop agreement, made with the assent of the employer.* * * * *in the absence of such an agreement the bill specifically prevents discrimination against anyone* * * * *for not belonging to a union* * * *. [Italics added.]

The court below while not adverting to the broadest argument suggested by the Affiliates, that coercion otherwise unlawful may validly be exercised to aid the representative under an exclusive collective-bargaining agreement containing no closed-shop provisions whatever, adopted a varia-

tion of it by holding that coercion otherwise unlawful might validly be exercised by the Company *against all employees* to aid the Affiliates as representative under an exclusive collective-bargaining agreement containing closed-shop provisions as to *only a portion of the employees,* in this case the new employees.[19]

The reasoning of the court below on this issue must fail in two respects. First, as we indicate hereafter (*infra,* pp. 46–50), the secret character, and failure to inform the employees, of the oral agreement which contained the partial closed-shop provisions, sapped the agreement of any power it otherwise might have conferred to justify coercion and discrimination even against the new employees covered thereby, let alone old employees. Second, even if it be assumed that the oral agreement was publicly made and announced and hence wholly valid as to the new employees, there is no basis for the view that it extends power to the employer to coerce old employees *not* covered by the compulsory membership requirement. The court's rationale (R. 872, 874–875) apparently was that because the Company had entered into a partial

[19] While its rationale is not entirely clear, the court below may also have based its conclusion that the Company's assistance was not illegal on the view that old employees were obliged to remain members of the Affiliates and that, therefore, the Company was entitled to coerce them. We discuss the error of this view below, pp. 39–44. In any event, however, such a view could not justify coercion of old employees who had never been members of the Affiliates.

closed-shop contract protected (*pro tanto*) by the proviso to Section 8 (3), (*infra*, p. 30), it obtained from the proviso the absolute right to "prevent the entrance of a rival union into its plant," and to that end could use coercive measures against every employee in the plant. But this approach basically misconceives the proviso to Section 8 (3) as a grant of authority to an employer to engage in whatever unfair labor practices he deems expedient in order to maintain the existing bargaining representative. There is nothing in the proviso or in its legislative history which suggests that it was enacted to protect the employer from dealing with a new union, or that it confers upon an employer rights of coercion other than the right to deny employment to those persons, and only those persons, who fail to observe the terms of a valid closed-shop contract. The legislative history of the Act (*supra*, p. 26; *infra*, pp. 33–34) makes clear that the proviso does not confer broad rights on employers to engage in a variety of undefined conduct which would otherwise constitute unfair labor practices in order to prevent employees from exercising their rights of self-organization by choosing a different bargaining representative. Rather the proviso is but an exception under carefully controlled conditions to the prohibition of discrimination in Section 8 (3).[20]

The decision of the court below cannot be reconciled with *National Labor Relations Board* v.

[20] See S. Rep. No. 573, 74th Cong., 1st Sess., p. 12.

Waterman Steamship Corp., 309 U. S. 206. In the *Waterman* case, the Company had entered into a collective agreement with the I. S. U. giving "preference of employment" to members of the I. S. U. as "vacancies occur" (at p. 211). To that extent the contract was within the proviso to Section 8 (3). But this Court held that the employer violated the Act when it engaged in discrimination in favor of the I. S. U. by discharging members of the N. M. U. in a situation where vacancies had not occurred. In so holding, the Court necessarily rejected the interpretation of the proviso adopted by the court below. For if, as the court below held, discrimination beyond the restraint inherent in the terms of a proviso contract is lawful to prevent the entrance of a rival union, then the employer in the *Waterman* case should have been absolved of the charges of violating Section 8 (3) of the Act. See also *South Atlantic Steamship Co.* v. *National Labor Relations Board*, 116 F. (2d) 480 (C. C. A. 5), certiorari denied, 313 U. S. 582.

2. *The subsequent closed-shop contract with the Affiliates of April 3, 1937, reduced to writing on May 20, 1937, was therefore invalid under Section 8 (3) of the Act since made with a union assisted by the Company's unfair labor practices*

Under Section 8 (3) of the Act a closed-shop contract, which *ipso facto* requires discrimination

upon the basis of union membership, is invalid except when the conditions enumerated in the proviso to the section are satisfied. The proviso is as follows:

> * * * *Provided,* That nothing in this Act * * * shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

The express language of the proviso plainly establishes as an essential prerequisite to the making of a valid closed-shop agreement the condition that the contracting labor organization shall not have been "established, maintained, or assisted by any action defined in this Act as an unfair labor practice." [21] This condition the closed-shop agreement here in controversy did not meet. Prior to its execution by the Company and the Affiliates on

[21] The Senate Committee on Education and Labor pointed out concerning this provision: "* * * the bill is extremely careful to forestall the making of closed-shop agreements with organizations that have been 'established, maintained, or assisted' by any action defined in the bill as an unfair labor practice." S. Rep. No. 573, 74th Cong., 1st Sess., p. 12.

April 3, 1937, and its reduction to writing on May 20, 1937, the Affiliates had been assisted by unfair labor practices committed by the Company and designed to discourage membership in the United and to coerce the employees to join the Affiliates (*supra*, pp. 17–19, 21–29). The Board, therefore, properly found (R. 194–196, 202, 206–207) that the closed-shop contract was invalid since an essential condition, the absence of employer assistance, was lacking.

The Affiliates, however, contend (Br. in Opp., pp. 9–10) that the closed-shop contract was protected by the proviso to Section 8 (3) of the Act despite employer assistance rendered to the Affiliates prior to the making of the contract. The contention is bottomed on the argument that the proviso invalidates a closed-shop contract only if the union's *majority* is secured or maintained by means of unfair labor practices, and that, therefore, any coercion falling short of effecting the adherence of a majority of the employees is immaterial to the validity of the contract. This contention was rejected by the Board (R. 195–196),[22] and was not passed upon by the lower court, although urged by the Affiliates.

The Affiliates' construction of the proviso runs counter both to its language and to its legislative

[22] The Board accordingly found it unnecessary to determine whether the Affiliates' majority on April 3, 1937, had been retained as a result of the unfair labor practices (R. 195).

history, and was rejected by this Court, at least
implication, in *International Association of M*
chinists v. *National Labor Relations Board,* 3
U. S. 72.

The language of the proviso negatives the vie
advanced by the Affiliates. The "assistance
clause expressly proscribes closed-shop contrac
with a labor organization assisted by "any action
constituting unfair labor practices under the Ac
there is no suggestion that the only assistan
which invalidates the closed-shop contract must
that which establishes or retains majority statu
In view of the plain and unambiguous words
the proviso, "no room is left for construction.
Lake County v. *Rollins,* 130 U. S. 662, 670–67
Yerke v. *United States,* 173 U. S. 439, 442.

Moreover, to adopt the Affiliates' interpret
tion would be to indulge the assumption that Co
gress was performing an idle act in enacting th
"assistance" clause. For were the clause delete
the remainder of the proviso would bar closed-sho
contracts with labor organizations whose majorit
status is attributable to employer coercion. Th
proviso permits such a contract to be made onl
with a labor organization which is "the repr
sentative of the employees as provided in sectio
9 (a) * * *," i.e., which has been "designated
selected for the purposes of collective bargainin
by the majority of the employees * * *
(Section 9 (a)). It is obvious that the "majority
which Congress referred to in Section 9 (a) is

freely chosen majority, not one attributable to employer coercion. Cf. *National Labor Relations Board* v. *Falk Corp.*, 308 U. S. 453, 461–462; *National Labor Relations Board* v. *Bradford Dyeing Assn.*, 310 U. S. 318, 340; *International Association of Machinists* v. *National Labor Relations Board*, 311 U. S. 72, 82; *National Labor Relations Board* v. *P. Lorillard Co.*, No. 71, this Term, decided January 5, 1942. If the "assistance" clause in the proviso were limited to bar closed-shop contracts only with an assisted "majority," it simply reiterates, and adds nothing to, the further requirement that the union be representative of the employees as provided in Section 9 (a).

The legislative history similarly forecloses the Affiliates' position. The report of the Senate Committee on Education and Labor states (S. Rep. No. 573, 74th Cong., 1st Sess., p. 12):

> * * * the proviso in two respects actually narrows the now existent law regarding closed-shop agreements. While today an employer may negotiate such an agreement even with a minority union, the bill provides that an employer shall be allowed to make a closed-shop contract only with a labor organization that represents the majority of employees in the appropriate collective-bargaining unit covered by such agreement when made.
>
> Secondly, the bill is extremely careful to forestall the making of closed-shop agreements with organizations that have been

"established, maintained, or assisted" b any action defined in the bill as an unfai labor practice. And of course it is clea that no agreement heretofore made coul give validity to the practices herein pro hibited by section 8.

The Senate Report thus makes clear that in tw respects the law relating to closed-shop agree ments is narrowed: (1) the contracting labo organization must be the majority repre sentative; and (2) the organization must not b established, maintained, or assisted by unfair labo practices. To like effect is the report of the Hous Committee on Labor.[23]

For Congress to have enacted the proviso in th form for which the Affiliates now contend woul have rendered administration of the proviso sub stantially unworkable and would have immunize

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[23] The Report reads as follows (H. Rep. No. 1147, 74t Cong., 1st Sess., p. 19):

"* * * The proviso does not impose a closed shop o all industry; it does not give new legal sanctions to th closed shop. All that it does is to eliminate the doubt and misconstructions in regard to the effect of section 7 (a upon closed-shop agreements, and the possible repetition o such doubts and misconstructions under this bill, by pro viding that nothing in the bill or in section 7 (a) or i any other statute of the United States shall illegalize closed-shop agreement between an employer and a labo organization, provided such organization has not bee established, maintained, or assisted by any action define in the bill as an unfair labor practice and is the choic of a majority of the employees, as provided in section 9 (a) in the appropriate collective bargaining unit covered b the agreement when made * * *."

unfair labor practices otherwise prohibited. For normally there is no feasible means of ascertaining how many employees, whether more or less than a majority, have been influenced by unfair labor practices to become or remain members of a favored labor organization. In the case at bar, for example, it is a matter of speculation whether, had the Company refrained from unlawfully assisting the Affiliates, a majority of the employees might not have repudiated the Affiliates and joined the United prior to April 3, 1937, thus debarring the Affiliates from entering into the closed-shop contract on that day. No accurate determination is possible by calling each employee to testify whether the unfair labor practices influenced him to adhere to the Affiliates; such testimony is notoriously unreliable. Cf. *Bethlehem Shipbuilding Corp.* v. *National Labor Relations Board*, 114 F. (2d) 930, 937 (C. C. A. 1); *Bethlehem Steel Co.* v. *National Labor Relations Board*, 120 F. (2d) 641, 653 (App. D. C.). As this Court held in *National Labor Relations Board* v. *Link-Belt Co.*, 311 U. S. 584, 588, "It would indeed be a rare case where the finders of fact could probe the precise factors of motivation which underlay each employee's choice."

Underlying these decisions is the recognition of the impossibility of measuring with any degree of exactness the subjective response to employer unfair labor practices, or the precise number of em-

ployees whose will has been coerced. Congress accordingly concluded that it was better to prohibit closed-shop contracts with assisted labor organizations without regard to whether a majority were influenced thereby, than to condition the validity of such agreements on a fruitless and unscientific inquiry into the psychological reaction of each employee exposed to unfair labor practices.[24]

Further, the decision of this Court in *International Association of Machinists* v. *National Labor Relations Board*, 311 U. S. 72, is decisive of the issue here. There the Machinists union contended that even though the employer's assistance may have contributed to the obtaining of a majority, a subsequent closed-shop contract could not be abrogated in the absence of proof and findings that the

[24] To support their construction, the Affiliates have suggested hypothetical situations in which the unfair labor practices will affect only one employee out of a thousand; or in which the assistance may consist merely of "a word of praise" by a straw boss; or in which the assistance may be "unsolicited, unwanted, or even unknown to the recipient organization." (Brief for the Affiliates in the court below, No. 8748, October Term, 1940, pp. 12, 17.) The answer to this argument is the one given by this Court in comparable circumstances in *Santa Cruz Fruit Packing Co.* v. *National Labor Relations Board*, 303 U. S. 453, 467, that "what is reasonably clear in a particular application is not to be overborne by the simple and familiar dialectic of suggesting doubtful and extreme cases." The unfair labor practices in the present case were neither slight, nor unwanted, nor unknown. On the contrary, the assistance was part of a broad plan to coerce membership in a favored labor organization and to forestall adherence to a rival.

employer's assistance served to maintain that majority until the time the contract was made (p. 79). The Court's primary answer (*ibid.*), that it was sufficient that during the interim period unfair labor practices continued to exist which deprived the employees of free choice, at least by implication rejected (since it did not require a showing that a majority had in fact been influenced to remain by the unfair labor practices) the argument that the proviso relates only to assistance which secures or retains the majority. Also, at another point in the opinion, the Court after reciting the grounds upon which the Board had held the closed-shop contract to be illegal, including the ground of employer-assistance to the contracting union, stated (p. 75):

> We think there was substantial evidence that petitioner had been assisted by unfair labor practices of the employer and that therefore the Board was justified in refusing to give effect to its closed-shop contract.[25]

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[25] See also *National Labor Relations Board* v. *J. Greenebaum Tanning Co.*, 110 F. (2d) 984, 987 (C. C. A. 7), certiorari denied, 311 U. S. 662; *International Association of Machinists* v. *National Labor Relations Board*, 110 F. (2d) 29, 34 (App. D. C.), affirmed 311 U. S. 72; *Warehousemen's Union* v. *National Labor Relations Board*, 121 F. (2d) 84, 87 (App. D. C.), certiorari denied, No. 627, this Term. These cases all recognize that majority status and absence of assistance are independent conditions precedent to the validity of a closed-shop agreement. There are no decisions to the contrary.

In sum, we submit that the Affiliates' interpretation of the proviso is refuted by the plain language of the statute, its legislative history, and the decisions which have construed the proviso, and that, accordingly, the Board was correct in its conclusion that the closed-shop contract of April 3, 1937, reduced to writing on May 20, 1937, was invalid.

3. *The refusal to reinstate 24 employees was therefore discriminatory in violation of Section 8 (3) and (1) of the Act since the closed-shop contract was invalid*

The Company after entering into the closed-shop contract on April 3, 1937, restricted reinstatement pursuant to that contract to employees who presented clearance cards from the Affiliates. As a result the Company excluded from reinstatement 24 adherents of the United, who were either unable to obtain clearance cards or did not obtain them in time (*supra*, p. 19). The Board found that the Company thereby discriminated against the 24 employees, 19 of whom were old and five of whom were new,[30] in violation of Section 8 (3) and (1) of the Act (R. 197–200, 208, 211). We consider the propriety of the finding separately with respect to the 19 old and the five new employees.

(a) *The old employees.*—The Company's denial of reinstatement to the old employees through im-

[30] We use the terms "old" and "new" employees in the same sense as before (*supra*, p. 5, note 3).

position of the clearance-card condition unquestionably violated Section 8 (3) and (1) of the Act. The sole basis on which the Company imposed the condition, which was in substance a requirement of membership in the Affiliates (R. 197, n. 44), was the invalid closed-shop contract of April 3, 1937. It is settled that the conditioning of employment upon affiliation with a labor organization is "a violation of § 8 (3) of the Act in absence of a valid closed-shop agreement, not present here." *National Labor Relations Board* v. *Link-Belt Co.*, 311 U. S. 584, 601; *International Association of Machinists* v. *National Labor Relations Board*, 311 U. S. 72, 81.

The court below, however, apart from its other holdings which we have already discussed (*supra*, pp. 26–29), additionally rejected the Board's finding that the old employees had been discriminatorily refused reemployment. This it did on the ground that the old employees who had been members of the Affiliates[27] were obligated to remain members.[28]

The court reached this result by declaring that it was "an implied term" of the July 1936 col-

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[27] The court's theory, it should be noted, is thus inapplicable to three of the 19 old employees, since three had never joined the Affiliates at all (*supra*, p. 19). The court incorrectly stated (R. 873) that 18 of the old employees found by the Board to have been discriminated against had been members of the Affiliates.

[28] Employees had signed cards, upon joining the Affiliates, providing that the signer designated the appropriate Affil-

lective agreements that all members of the Affiliates "would cooperate in the enforcement" thereof (R. 871); that this bound all members "to be in good union standing in order to continue in respondent's employ" (R. 873); and that they "violated the [1936 collective] contract[s] when they tried to bring in a rival union, and became rightfully subject to discharge" (R. 873).

There is no basis for the court's finding of an implicit undertaking in the collective agreements binding members of the Affiliates to retain membership therein and not join a rival union under penalty of discharge. Certainly the express terms of the agreements, as the Board found upon substantial evidence (*supra*, pp. 14–16) and as the court did not question, contained no compulsory membership requirements except as to *new* employees and "placed no limitation" on the right of old employees "to drop their membership in the" Affiliates (R. 178). Hence the court below apparently viewed as inherent in *any* collective agreement an undertaking binding all members

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iate as bargaining representative, and further providing (R. 188; R. 865):

"I also authorize the Company to deduct, within thirty days, from wages due, the prevailing initiation or reinstatement fee of the organization as indicated hereon and transmit same to the authorized representative of the organization.

"The full power and authority to act for the undersigned as described herein supersedes any power or authority heretofore given to any person or organization to represent me,

of the contracting union to retain membership and refrain from joining a rival.

That view, we submit, cannot be sustained. To hold that the mere making of a collective contract which contains no requirement that employees maintain membership in the contracting union subjects a member to discharge if he surrenders his membership or joins a rival union is entirely to disregard the provisions of the Act and the legislative history above reviewed (*supra*, pp. 26, 33–34). It is clear therefrom that an obligation to maintain membership can arise only through a collective contract so providing. See S. Rep. No. 573, 74th Cong., 1st Sess., p. 13; H. Rep. No. 1147, 74th Cong., 1st Sess., pp. 20, 21. When the collective agreement includes no closed-shop provisions, or, as here, includes only a closed-shop provision limited to new employees, it is clear that the agreement cannot be read as also imposing closed-shop conditions on old employees who are members of the contracting union.[29]

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and shall remain in full force and effect for one year from date and thereafter, subject to thirty (30) days written notice of my desire to withdraw such power and authority to act for me in the matters referred to herein."

[29] It may, of course, be that in the *membership* agreement made between the union and its members, the members may assume obligations *to the union* to remain a member of the union for a specified period. Breach of this membership agreement, however, while possibly subjecting the members to damages or other common-law liabilities to the *union*, is

Adoption of the rule advanced by the cou below would gravely limit the employees' freedo to choose their representatives. Once a collecti contract were made, the choice of bargaining re resentatives would, for practical purposes, becom irrevocable, since the employer could rightfull discharge any employee who chose another re resentative or even advocated such a change i representation during the life of the collecti contract.[39] This is contrary to the stated purpos of the Act which guarantees to employees the rig

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not, for the reasons already stated, a breach of the *collecti* agreement between the employer and the union and does n subject the employees to discharge unless the collective agre ment so provides. In the instant case, for instance, the ol employees who had designated the Affiliates as their ba gaining agent were required by the terms of their membe ship and designation agreement with the Affiliates to giv 30 days' written notice in order to terminate such designatio (*supra*, p. 39, n. 28). In withdrawing from the Affiliates i may be that they violated the agreement with the Affiliates i their failure to give notice. But this does not mean that thei failure to notify the Affiliates constituted a violation of th July 1936 collective agreements between the Company an the Affiliates which contained no closed-shop provision applicable to them.

[39] While we have discussed the undertaking which th court below implied as one to maintain membership, it scope is even broader than that; the court stated tha members of the Affiliates who "tried to bring in a riva union" (R. 873) became subject to discharge, and that the violated the "implied term" when they took action "look ing toward" a change (R. 871). Apparently mere ad vocacy of a change in affiliation would thus be ground fo dismissal.

to bargain collectively through representatives "of their own choosing" (Section 7).

Here the movement to initiate the United began in March 1937, only about three months before the collective agreements of July 1936 were to expire. Under the view of the court below, members of the Affiliates who advocated affiliation with the United immediately subjected themselves to discharge. The practical result of this rule is to make impossible the selection of any bargaining representative other than the Affiliates upon the expiration of the 1936 collective agreements. Another bargaining agent could not normally hope to be selected unless it conducted an organizing campaign. Such campaigns cannot be carried on exclusively by outside organizers. The latter must be assisted by employees within the plant who are able to appeal to their fellow employees on grounds of mutual interest. Under the view of the court below, such activities on behalf of any organization other than the Affiliates are prohibited while the collective contracts are in effect. The result is that the Affiliates, as the sole candidate for employee choice able to conduct an effective campaign, would still be the choice of a majority of the employees when the 1936 collective agreements expired, would immediately enter into another collective agreement—in this case it did so even in advance of the expiration of the 1936 agreements by entering into the April 3,

1937, and May 20, 1937, collective agreement (*supra*, p. 19)—and would thus perpetuate indefinitely the Affiliates' status as bargaining representative.

This could not have been the intent of Congress. Just as in political elections the voters are permitted, before the term of the existing officeholder expires, to campaign for any candidate for the next term, so in selection of a bargaining agent, the employees must be able, before the term of existing representative has come to an end, to campaign for any union for the next period. At least in situations such as are here presented,[21] the freedom and the rights of labor require, particularly as the life of the collective contract draws to a close, that the employees be able to advocate a change in their affiliation without fear of discharge by an employer for so doing.

(b) *The new employees.*—The case of the five new employees differs from that of the old employees only in that the secret oral agreement of 1933 between the Company and the Affiliates, renewed in July 1936, required new employees to join the Affiliates as a condition of employment (*supra*, pp.

[21] What would be the employee's rights to advocate membership in, or to join, a rival union, toward the termination date of a full *closed-shop* contract, and whether the employer would be justified in such a situation in discharging the employee, are not here involved. Whatever may be the restrictions under such facts, here there was no closed-shop contract covering the employees against whom discrimination is now sought to be justified.

12–13). The Board properly rejected (R. 199–200, 179) the contention that, even if the imposition of the clearance-card condition against the new employees was illegal under the invalid closed-shop contract of April 3, 1937, it was nevertheless permissible under the oral agreement.

The Board's conclusion in this respect rests on two independent grounds: (1) that the oral agreement was abandoned by the parties at the time the invalid closed-shop contract of April 3, 1937, was made (R. 193–194, 199); and (2) that even if the oral agreement had not been abandoned, its secret character and the Company's failure to inform the employees of its existence (*supra*, pp 13–14) deprived the Company of the right to insist that its new employees join the Affiliates.

(1) The first ground involves a determination of fact. As to this, upon the substantial evidence above cited (*supra*, p 19),[32] the Board found (R. 193–194):

> In substance, though not in form, the arrangement effected between the respondent and the A. F. of L. Affiliates on or about April 3, 1937, was an abandonment

[32] The record is barren of evidence that the Company, at the time of reopening the plant, even purported to rely on the actual oral agreement of 1936 as the basis for refusing to reinstate the new employees. Instead, as we have noted (*supra*, pp. 18–19), the Company in its newspaper advertisements announced a fictitious 1936 closed-shop agreement which in fact had been made during the shut-down.

> of the oral agreement as insufficient to meet the exigencies of the situation and its replacement by a closed-shop agreement
> * * *

It should be added that the abandonment of the oral agreement and the substitution therefor of the closed-shop contract was conceded by the Affiliates at the oral argument before the Board (R. 193-194, Tr. Oral Argt., p. 12).[33] Clearly, therefore, the oral agreement, since it had been abandoned, could not justify the discrimination which occurred thereafter.

(2) Even if the oral agreement had not been abandoned, its secret character and the Company's failure to inform the employees of its existence would, as the Board held, forbid reliance upon the agreement as justifying imposition by the employer of the penalty of deprivation of employment because of nonmembership in the Affiliates. The Board stated the reason for its conclusion as follows (R. 179):

> * * * the proviso [to Sec. 8 (3)] does not permit imposition of the penalty in a case where no notice has been given of the existence of the agreement. The proviso in permitting the employer "to require membership" in a labor organization manifestly implies that the employee shall be advised that the employer's action is taken pursuant to an agreement. Otherwise em-

[33] A copy of the transcript of the oral argument before the Board is on file with the Clerk of this Court.

ployees would have no means of knowing whether they were being illegally discriminated against, or whether the employer was simply enforcing a valid obligation. The proviso was hardly intended to permit equivocal employer conduct, so likely to precipitate industrial conflict over what employees, in view of the employer's silence, quite reasonably would conclude was an interference with rights guaranteed to them by Section 7 of the Act.

The Board's interpretation of the proviso is a reasonable one and clearly furthers the purpose of Section 8 (3) to protect employees against improper discharge, a possibility inherent in an employer's concealment of an agreement which requires membership in a union as a condition of employment. A contrary holding would seriously endanger exercise by employees of the rights to self-organization guaranteed in Section 7: an employee who sought to further a union not favored by the employer might suddenly, without prior warning, find that he had been discharged upon the claim that the employer had entered into a secret contract with the favored union requiring the employee's membership in the latter organization. The possibilities of fraud and coercion and the restrictive effects upon employee self-organization inherent in such a situation are manifold and obvious.[14] The employer would be free to keep the

[14] The mere possibility of an unknown secret agreement deprives an employee of full freedom of self-organization: If he should choose to join or campaign for a union other

weapon in reserve, using it only when and as he saw fit for his own convenience. The confusion and collusive manipulation to which such a secret agreement gives rise is vividly demonstrated by the very sequence of events here in controversy.

It is, therefore, reasonable to insist that an employer, before being permitted to enforce a compulsory membership requirement, should provide the employees, either orally or in writing, with "an authentic record of its terms" as evidence "of the good faith of the employer." Cf. *H. J. Heinz Co. v. National Labor Relations Board,* 311 U. S. 514, 524. Only in that way do the employees receive adequate protection; at the same time the employer who enters into a compulsory membership contract in good faith and apprises the employees of its existence will be given the full immunity which the proviso to Section 8 (3) was intended to confer.

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than the one holding an exclusive bargaining contract in the plant, he would do so at his peril. If, without warning, he can be discharged for such activity, he would be reluctant to take the risk at all.

In other ways, too a secret agreement restricts an employee of his freedom and contravenes the policy of the Act. Whether or not one seeking to be hired is then subject to a union membership requirement might well be a factor in an applicant's decision to take employment. Further, once he is employed, the employee's course of conduct might in other respects be charted by the presence or absence of a membership requirement. If the requirement is made known to him, and he takes the employment, he will, of course, join the union and have a voice in its affairs. If, on the other hand, he is not aware of the requirement, he is subject to all its restrictions at any time which the employer may choose,

The court below (R. 873–874), however, held that notice may be imputed to the employees because the Affiliates were aware of the oral agreement they had made and, since they were the majority and hence exclusive representative of all the employees in the plant, the latter, as principals, were chargeable with the knowledge of their representative. The short answer to this view is that here the Company deliberately withheld general notice of the agreement.[25] But in any event, narrow common-law concepts of principal and agent do not furnish a proper basis for limiting the protection of employees under the Act. Strict application of agency principles is no more permissible in this situation than was "strict application of the rules of *respondeat superior*" in *International Association of Machinists* v. *National Labor Relations Board*, 311 U. S. 72, 80. "We are dealing here not with private rights * * * nor with technical concepts * * * but with a clear legislative policy to free the collective bargaining process from all taint of an employer's compulsion, domination, or influence" (*ibid.*). Whatever the rules of imputed knowledge at common law may be, it is reasonable to construe the proviso to Section 8 (3), as the Board did, to

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without at the same time having a share in that shaping of his employment destiny and union policy which joining the union would bring him. In effect, therefore, he is lulled into disenfranchising himself. Clearly, these are results not consonant with principles of fairness to the employee.

[25] See President Tuteur's letter, *supra*, p. 14.

mean that the employer must give actual notice to his employees of a compulsory membership contract before he may rely on the proviso to justify discrimination on the basis of union membership. Since the Company failed to give such notice, the discrimination may not be validated on the basis of the oral agreement.

The court below, therefore, erred in rejecting the Board's finding that the five new employees, as well as the 19 old employees, were refused reinstatement discriminatorily in violation of Section 8 (3) and (1) of the Act.

CONCLUSION

It is respectfully submitted that the decree of the court below should be reversed, and the cause remanded with directions to enforce the Board's order in full, except for its work-relief provisions.

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JANUARY 1942.

APPENDIX

The relevant provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, U. S. C., Title 29, Sec. 151 *et seq.*) are as follows:

> SECTION 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.
>
> SECTION 8. It shall be an unfair labor practice for an employer—
>
> (1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.
>
> * * * * *
>
> (3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided,* That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, secs. 701–712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an em-

ployer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

* * * * * *

SECTION 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment * * *.

U. S. GOVERNMENT PRINTING OFFICE: 1943

In the Supreme Court of the United States

OCTOBER TERM, 1941.

No. 558.

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

ELECTRIC VACUUM CLEANER COMPANY, INC.,
INTERNATIONAL MOLDERS' UNION OF NORTH AMERICA, LOCAL NO. 430,
PATTERN MAKERS ASSOCIATION OF CLEVELAND AND VICINITY,
INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT NO. 54,
METAL POLISHERS' INTERNATIONAL UNION, LOCAL NO. 3, and
FEDERAL LABOR UNION NO. 18,907,
Respondents.

BRIEF OF RESPONDENT, ELECTRIC VACUUM CLEANER COMPANY, INC., IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

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To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States of America:

This cause grows out of a dispute for representation between the respondent unions herein called "A. F. of L." and United Electrical and Radio Workers of America, affiliated with the Congress of Industrial Organization, herein called "C.I.O."

There is no issue as to wages, hours, or the ordinary grievances between employer and employee. (Tr. 285, 724.)

The facts are not particularly involved, and are clearly and correctly set forth in the Court's opinion. (Tr. 867-875.)

STATEMENT.

The petitioner's statement is inaccurate and incomplete in certain respects, and these inaccuracies and omissions affect the proper consideration of the questions which petitioner seeks here to present. Respondent's only purpose in offering a brief restatement is to clear these inaccuracies and supply the omissions.

In June of 1935, and again in July of 1936, respondent entered into written contracts with A. F. of L. The term of each contract was one year, and the making of each contract by respondent was on the express consideration that A. F. of L. represented a majority of the employees. When the first contract was signed, A. F. of L. represented 608 out of a total of 799 employees, and at the time the second contract was signed, 771 out of a total of 809 employees. Each contract provided for exclusive representation by A. F. of L., which representation was evidenced and established, in each instance, by written authorizations signed by the individual employees (A. F. of L.'s Ex. 2, Tr. 865), which were exhibited to and checked by respondent. A copy of the form of written authorization is also included in the foot-note appended to the Court's opinion. (Tr. 868.) These authorizations recited, among other things, that the signer was a member of one of the A. F. of L. affiliates, and provided with respect to representation, and the period during which it was to continue and be effective:

> "* * * to represent me, and, in my behalf, to negotiate and conclude all agreements as to hours of labor, wages and other employment conditions. I also authorize the Company to deduct, within thirty days, from wages due, the prevailing initiation or reinstatement fee of the organization as indicated hereon and transmit same to the authorized representative of the organization.
>
> "The full power and authority to act for the undersigned as described herein supersedes any power or authority heretofore given to any person or organization to represent me, and shall remain in full force and

effect for one year from date and thereafter, subject to thirty (30) days' written notice of my desire to withdraw such power and authority to act for me in the matters referred to herein."

This power of attorney for representation the petitioner refers to as a "membership authorization."

The making of the two contracts, and the authorizations for representation, and the fact that they were made freely and without interference or coercion on the part of the respondent, is undisputed.

At the time each written contract was made, there was likewise an accompanying oral agreement which provided as stated by the Court in its opinion (Tr. 868):

> "That in the future all new employees, after a probationary period of two weeks, should be compelled to join the appropriate craft union of A. F. of L., but that the old employees, of whom some 67 did not wish to join the A. F. of L., should not be compelled to do so,"

(old employees referring to those in the employ of respondent on the date of the making of the first contract in 1935).

In spite of the Court's finding, and the uncontradicted evidence in respect thereto, petitioner, in its statement, omits mentioning the application of the oral agreements to old employees, and likewise erroneously persists in referring to the oral agreements as being secret, and their terms not having been communicated to the employees. Not only were old employees covered but there was nothing secret. The shop committee of the employees was notified, the employees were advised not only by notices posted throughout the plant, but by their foreman and by the announcement that any employees who did anything to disturb the peaceful and friendly relations under the contract would be considered as working against the best interests of the company, and subject to discharge. (Tr. 263, 264, 265, 290, 291, 544, 688, 700, 750, 751, 785, 789, 792, 811 and 812.)

With respect to notice, the Court found (Tr. 873):

> "Knowledge of the terms of the agreement was received by the representatives who negotiated the contracts, while acting within the scope of their authority, and it is elementary that such notice to the union was notice at least to all but 38 of the men when the contract was signed in June, 1936. * * * It is uncontradicted on this record that new employees were to be given two weeks probation, and, if their work was satisfactory, they were then required to join the union. This arrangement was reasonable and in no way illegal. It is also uncontradicted that it was the duty of the appropriate craft union to solicit men for membership. The duty of notice in no case rested upon the respondent. * * * In a few cases, where new men employed stated they had no notice of the requirement, the union had merely failed to perform its function of signing them up. This dereliction cannot rightfully be charged to the respondent."

In March, 1937, a few of the old employees started organizing a local union to be affiliated with C.I.O. This attempt to organize workers brought about the alleged unfair acts with which respondent is charged, namely, cooperation with A. F. of L., and resulted in a one-day sit-down strike, and a later closing of the plant. Prior to this time during the 1935 and 1936 contracts there had been no labor disputes of any kind between respondent and its employees.

When the plant was reopened after a two-week shut-down, the then existing contract (1936) was supplemented to require A. F. of L. membership for all employees. This supplementing did not mean an abandonment of the old contract or the making of a new one, as the petitioner contends, but was merely an enlargement of the existing contract, which, up to that time, required union membership by all employees, except the thirty-eight employees working when the 1936 contract was made but who had not signed written authorizations.

Shortly after the reopening of the plant, but still prior to the expiration of the then existing contract, negotiations for a third contract with A. F. of L. were had, which resulted in a contract being signed in May, 1937, which contract was a strictly closed shop contract. At the time this third contract was signed, the number of respondent's employees had increased, and respondent was presented with evidence that 910 of its then 1,032 employees had approved the new contract by signing duplicate copies, which approval was in the form following:

> "I, the undersigned, having read the above agreement hereby approve the making of the same by the unions, and during the term covered by said agreement and renewal thereof, while I am in the employ of Electric Vacuum Cleaner Company, Inc., I irrevocably designate the union as my particular bargaining agent, and agree to abide by all the terms and conditions of said agreement." (Tr. 43.)

It is undisputed—

(a) That the employees never revoked their respective authorizations for representation.

(b) That the 1935-1936 contracts, oral and written, were made with a labor organization which was not established, maintained or assisted by any unfair labor practice, and represented an uncoerced majority of the employees, and

(c) That at the time the supplement to the 1936 contract was made in April, and the third contract was concluded in May of 1937, the contract of 1936 was in full force, and the authorizations referred to in (a) above were outstanding and unrevoked.

The enforcement of the board's order finding that respondent had illegally assisted A. F. of L. and ordering reinstatement and back pay, on review, was denied by the court.

QUESTIONS CLAIMED TO BE PRESENTED BY PETITIONER.

Petitioner propounds the following five questions, the first two of which are improperly premised on the oral agreements being secret, and applying to new employees only:

> 1. "Whether the respondent by virtue of its 1935 and 1936 agreements with the union as to the membership of new employees was protected by the proviso of section 8 (3) of the Act in compelling the union membership of old employees."
>
> 2. "Whether the oral and secret understanding with the union at the time the 1935 and 1936 contracts were signed was sufficient to invoke the protection of the proviso of section 8 (3) even as to the new employees."

The oral agreements required union membership of all but a few of the old, as well as of all the new employees. They were not secret. They had been negotiated by the respondent with the authorized representatives of its employees. At the time of the making of each contract, the labor organization contracted with was not maintained by any unfair labor practice, and represented an uncoerced majority of the employees. The agreements were supported by written authorizations for representation, which were likewise freely executed.

The court below very properly held that "the mandate of the proviso is not limited to the usual closed shop; it does not require that the condition of membership in the union contracted with should attach to men previously employed, as well as to those employed in the future."

The contracts being fully within the terms of the proviso at the time made, that status would not be lost until the contracts terminated, and respondent was therefore protected by the proviso with respect to old as well as new employees.

3. "Whether the 1935 and 1936 agreements, read in the light of revocable membership applications signed by the union members, implied an undertaking by those employees not to change their union affiliation during the life of the 1935 and 1936 agreements."

The authorizations for representation, which are referred to by petitioner as membership applications, while revocable after one year, were never revoked. Furthermore, the authorizations include a declaration of membership in A. F. of L. and being the consideration for the making of the contracts, not only implied an undertaking by such employees not to change their union affiliation during the year, but justified the employer in relying on there being no change of representation during each year's term of the contracts or thereafter, unless and until written notices were given. The attempted change of affiliation to C.I.O. involved a change of representation as well.

This question, however, is entirely moot, and does not arise inasmuch as none of the employees withdrew their representations as to union affiliation or revoked the authorizations for representation.

4. "Whether, assuming there was such undertaking, the respondent by coercion and discrimination may discourage the employees from advocating toward the close of the contract period a change in union affiliation."

The application of the word "advocating" to the acts of the employees during the period in question is hardly proper. The "advocating" took the form of a sit-down strike, of soliciting employees to deliberately disregard their commitments to respondent and brought about the closing of respondent's plant, threatening the total destruction of its rights under its contract. Such "advocating," the court below very properly held the respondent had the right to discourage.

A consideration of question 5 involves the 1936 contract, and the unrevoked authorizations for representation.

5. "Whether the favored union had been maintained and assisted by the respondent, prior to the 1937 closed-shop agreement, so that this agreement is not entitled to the protection of the proviso of section 8 (3) of the Act."

The board itself decided that the 1936 contract was executed when A. F. of L., pursuant to written authorizations, represented a majority of the employees, and in such representation had not been assisted by any unfair labor practices of the respondent.

The 1937 closed shop agreement was made while the 1936 contract was in full force and effect, and with the duly designated representatives of at least 85% or more of the employees, and under such circumstances is entitled to the full protection of the proviso of Section 8 (3) of the Act.

REASONS FOR DENYING THE WRIT.

The first of the two reasons urged by petitioner for granting certiorari is predicated largely on facts not supported by the evidence, or the court's findings, in that it assumes that the contracts are limited to new employees, that the terms of the contracts are secret, and disregards the fact that at the time of the occurrence of the acts complained of none of the outstanding authorizations for representation by A. F. of L. had been revoked.

The 1935 and 1936 agreements, while termed preferential closed-shop agreements, were, as the court below held, "in the nature of closed shop agreements, for eventually, as the old men dropped out, the contracts were renewed, and a genuine closed shop would be established."

Old employees who were not members of a union in June of 1935 were not required to join a union. At the time the 1936 contract was made, there were only 38 men in this class. The old employees, upon joining the union, necessarily abandoned their exempt classification, and having joined and executed authorizations for representation

were required to continue as union members. New employees not joining after the probationary period, were subject to discharge. All A. F. of L. members, and all new employees were accordingly working under an agreement which differed in no respect from a strictly closed-shop agreement: Such of the old employees as did not join A. F. of L. were, nevertheless, subject to the contract insofar as their activities were limited to doing nothing which would disturb respondent's relations with A. F. of L., and to that extent their right to participate in any activities or be affiliated with any union that interfered with A. F. of L.'s contract was prohibited.

Petitioner urges that the acts of respondent after March of 1937 were illegal acts of assistance of A. F. of L., which disqualified the respondent and A. F. of L. from entering into any contracts, and therefore the April and May contracts were not within the proviso of Section 8 (3) citing *International Association of Machinists v. National Labor Relations Board*, 311 U. S. 72, as controlling. This decision was fully considered by the court below, and the facts analyzed and distinguished from those in the present case, it being the court's conclusion that "International Machinists case does not hold that an employer who has made a valid contract with a union, looking toward a closed shop, may not take action pursuant to negotiations with the exclusive bargaining representatives under the Act, to prevent the entrance of a rival union into its plant and the consequent disruption of industrial peace."

The court also had before it the following cases, which the petitioner again refers to in its petition for certiorari:

Hamilton-Brown Shoe Company v. National Labor Relations Board, 104 Fed. (2d) 49, 54 (C. C. A. 8);

National Labor Relations Board v. National Motor Bearing Company, 105 Fed. (2d) 652, 659-660 (C. C. A. 9) and

National Labor Relations Board v. J. Greenebaum Tanning Company, 110 Fed. (2d) 984, 987 (C. C. A. 7),

which cases, on the facts, are likewise distinguishable.

The 1936 contract was signed in July of 1936, and, if not renewed, expired June 23, 1937. The acts complained of occurred during March and April of 1937. The proviso of Section 8 (3) with respect to the excepted type of contract for union representation is "* * * If such labor organization is the representative of the employees, as provided in section 9 (a) in the appropriate collective bargaining unit covered by such agreement *when made*." It is undisputed that the 1936 contract, when made, came within the terms of the proviso, and if so, the protection of the proviso unquestionably continued during the term of the contract.

The supplementing of the contract in April, and the making of the new contract in May, were further supported by the then outstanding and unrevoked authorizations appointing A. F. of L. as bargaining agent.

What respondent did in March, and thereafter, was solely in reliance that A. F. of L. then, and until the end of the term of its contract the following June, was the duly authorized representative of its employees, and that under the contract, it had the right and duty to cooperate to the extent that it did.

> "Employer's encouragement of membership in union which was representative of employees and with which employer had made agreement to employ only members of union and discouragement of membership in another union did not constitute an unfair labor practice within the National Labor Relations Act."
>
> *M. & M. Woodworking Company v. National Labor Relations Board*, 101 Fed. (2d) 938 (C. C. A. 9).

For its second reason, petitioner contends that the court below, without regard to Section 8 (3), and because

of the revocable "membership applications" (using petitioner's designation) signed by union members, held that it was an "implied term" of the 1936 contract, that the members of the A. F. of L. affiliates agreed, during the term of the contract, not to "discard membership in one union for membership in another," and that they "violated the contract when they tried to bring in a rival union, and became rightfully subject to discharge."

Petitioner states that there was no evidence to support any finding of an express undertaking of this nature. What the court did say was this:

> "The legal conclusion made by the Board that the members of the A. F. of L., after the 1935 and 1936 contracts were executed, were free to abandon such membership at will, when considered in the light of the authorizations signed by the men and the total failure to file withdrawals in accordance therewith, is plainly erroneous. So far as the understanding of the parties illuminates the meaning of the obligation, it is that the men were bound for the period defined in the authorizations. There was no testimony to the contrary." (Tr. 871.)
>
> "* * * These authorizations, running for a term of one year and thereafter, could be withdrawn upon thirty days' written notice; but the record presents no such withdrawal. The term of one year was reasonable and the authorizations were in every respect legal. Signing the authorizations entitled the men to the benefits of union membership, including the benefits of the contract between the respondent and the affiliated unions, and they in turn were bound thereby during the term of the authorizations. They were both ethically and legally bound not to disrupt the contract. It follows that any employees who were members of the A. F. of L., whether old or new men, violated the contract when they tried to bring in a rival union, and became rightfully subject to discharge. The National Labor Relations Act does not prohibit the effective discharge for repudiation by the employee of his agreement. *National Labor Relations Board v. Sands Mfg. Co.*, 306 U. S. 332, 344." (Tr. 872-3.)

It is clear from the foregoing, that there is no merit in petitioner's claim that "the court below therefore views such an undertaking as inherent in any exclusive union contract." The court had under consideration in this case a particular form of contract and authorization, which it proceeded to construe.

Furthermore, petitioner's policy and administration of the Act, with respect to the proviso in Section 8 (3), as reflected by its decisions in other matters, instead of being handicapped by the decision of the court below, as it now claims, is in harmony with that decision, and we call attention to *In the Matter of J. E. Pearce Contracting and Stevedoring Company, Inc.*, and *International Longshoremen and Warehousemen's Union, Local 2-5*, decided February 29, 1940, and reported in 20 N. L. R. B. 1061, the headnote of which reads:

> "Stevedore Industry—Interference, Restraint, and Coercion: charges of, dismissed—Discrimination: employer's reliance upon a preferential-employment contract in awarding preference in employment to members of contracting union held valid despite transfer of allegiance by a substantial number of the members of the contracting union to another labor organization; disestablishment of contracting union by International and substitution of a new local in the place of the contracting union as a disciplinary measure against employees who transferred their allegiance, held not to dissipate the preferential-employment contract—Collective Bargaining; charges of refusal to bargain collectively dismissed—complaint: dismissed."

The contract in the cited case was made in September, 1937, the acts complained of occurred in July, 1938, and the contract was renewed in September, 1938. There was no claim that when the contract was executed in September, 1937, the union was assisted by any unfair practices or that it did not represent a majority, and it was therefore held to come within the proviso of Section 8 (3) of the Act. The board in supporting its decision refers, among other

cases, to *M. & M. Woodworking Company v. National Labor Relations Board*, 101 F. (2d) 938 (C. C. A. 9), *supra*, and *In the Matter of Ansley Radio Corporation*, 18 N. L. R. B. 1028.

CONCLUSION.

It follows that the reasons relied upon by the petitioner neither establish that the decision below is in conflict with, or departs from, the decision of this and other courts, nor that it raises any question of importance in the administration of the Act, and that therefore the petition for writ of certiorari should be denied.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1941.

No. 588.

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

ELECTRIC VACUUM CLEANER COMPANY, INC.,
INTERNATIONAL MOLDERS' UNION OF NORTH AMERICA, LOCAL NO. 430,
PATTERNMAKERS' ASSOCIATION OF CLEVELAND AND VICINITY,
INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT NO. 54,
METAL POLISHERS' INTERNATIONAL UNION, LOCAL NO. 3, and
FEDERAL LABOR UNION NO. 18,907,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

BRIEF FOR RESPONDENT, ELECTRIC VACUUM CLEANER COMPANY, INC.

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INTERNATIONAL ASSOCIATION OF MACHINISTS,
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Respondents.

ON WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SIXTH CIRCUIT.

BRIEF FOR RESPONDENT, ELECTRIC VACUUM CLEANER COMPANY, INC.

OPINIONS BELOW.

Reported as stated in brief for National Labor Relations Board.

JURISDICTION.

The decree of the Circuit Court of Appeals, the filing and granting of a writ of certiorari, the invoking of the jurisdiction of the Court under the Judicial Code and the National Labor Relations Act, and the pertinent provisions of the Act involved are stated in the brief for National Labor Relations Board and the Appendix thereto.

PROCEEDINGS BEFORE THE BOARD.

The statement of the proceedings in the petitioner's brief, pages 4-7, and Note 2, by reason of certain omissions is insufficient to properly present a question of law which this respondent will urge as Point IV *infra*, in the event that the decree of the lower court should be reversed.

Respondent therefore submits the necessary date references[1] and adds that its exceptions to the Board's

---

[1] May 21, 1937—Complaint against respondent issued. (Tr. 20.)
May 28, 1937—Amended complaint filed. (Tr. 28.)
June 4, 1937—Respondent's answer filed. (Tr. 33.)
June 10, 1937—Union respondents given leave to intervene. (Tr. 44.)
June 10, 11, 15, 16, 17 and 18, 1937—Hearing before Trial Examiner.
Nov. 1, 1937—Proceedings transferred to and continued before the Board (Tr. 47), and no Trial Examiner report issued.
July 7, 1938—Board issued findings of fact, conclusions of law and order. (Tr. 48-70.)
July 16, 1938—Respondent's exceptions filed. (Tr. 71-75.)
Aug. 23, 1938—Exceptions overruled. (Tr. 79-80.)
Feb. 2, 1939—Respondent filed in Circuit Court of Appeals for the Sixth Circuit its petition to review Board's order. (See motion to dismiss.) (Tr. 219-221.)
Apr. 11, 1939—Board on its own motion vacated its findings, conclusions and order of July 7, 1938. (Tr. 82.)
Apr. 24, 1939—Board's motion to dismiss Respondent's petition in Circuit Court of Appeals filed (Tr. 219-221), *for the reason that no intermediate report was made by Trial Examiner.* (Tr. 222, Exhibit B.)
May 9, 1939—Board's motion granted and petition in Circuit Court of Appeals dismissed. (Tr. 223.)
June 21, 1939—Proposed findings, conclusions and order issued by Board (Tr. 84-137), to which exceptions were filed by respondents (Tr. 137-148), and an oral hearing on the exceptions was had in Washington.
Dec. 21, 1939—Board overruled exceptions, dismissed petition for investigation and certification of rep-

order issued July 7, 1938, among other things, contained the following:

> "Respondent excepts to the decision and order of the Board, and each and every part and paragraph thereof, upon the ground that *no intermediate report of the Trial Examiner was filed in these cases*, so that Respondent had no opportunity to object or except thereto before the making of said decision and order, and that Respondent was not in any manner advised before the making of said decision and order of the proposed nature or contents thereof, and therefore had no reasonable opportunity to know the same or to object or except thereto." (Tr. 71.) * * *
>
> "The Board, in failing to decide this case for *thirteen months* after trial, has by such unreasonable delay prejudiced Respondent's rights, in that in case of an affirmance of the order directing reinstatement of certain employees, Respondent will then be required to pay in back wages a sum greatly in excess of that which would have been payable had the decision been promptly rendered, and by reason thereof Respondent excepts thereto." (Tr. 75.) (Emphasis ours.)

Respondent's petition to review the Board's order, filed in the Circuit Court of Appeals for the Sixth Circuit, showed the overruling of its exceptions which included an exception to the thirteen months delay, and the failure to file an intermediate report, and was dismissed on the Board's motion, for the reasons stated in Exhibit B (Tr. 222):

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resentatives, and entered the findings, conclusions and order here involved. (Tr. 150-217.)

Sept. 9, 1940—Board's petition for enforcement filed in the Circuit Court of Appeals for the Sixth Circuit. (Tr. 1-8.)

June 6, 1941—Circuit Court of Appeals' order was set aside and petition dismissed. (Tr. 866.)

Sept. 6, 1941—Petition for certiorari filed by the Board in this Court.

Oct. 20, 1941—Writ of certiorari to the Circuit Court of Appeals for the Sixth Circuit granted. (Tr. 876.)

"As you know, the Board, prior to the issuance of the Decision, Order and Direction of Election, in these cases, had adopted the policy of issuing proposed findings and a proposed order where no intermediate report was made by the trial examiner. Failure to do so in this instance was entirely inadvertent and is intended to be corrected by vacation of the Findings of Fact, Conclusions of Law, Order and Direction of Election. The Board also desires to give the entire case further consideration."

The Board's findings of fact, proposed conclusions of law, and proposed order, issued June 21, 1939, were excepted to by respondent and the exceptions included the following:

"The Board, in failing to decide this case for thirteen months after trial, and by delaying and preventing Respondent's attempt to review the action of the Board herein, and by re-opening the case upon its own motion, and thereafter submitting proposed findings of fact, conclusions of law, and order, in substance the same as the order vacated, has, by such unreasonable delay, prejudiced Respondent's rights, and in case the proposed findings of fact, conclusions of law, and order directing reinstatement of certain employees, become final, and are, thereafter affirmed, Respondent will be required to pay in back wages a sum greatly in excess of that which would have been payable had the decision been promptly rendered; by reason thereof Respondent excepts thereto." (Tr. 144-5.)

STATEMENT.

Respondent, Electric Vacuum Cleaner Company, Inc.'s involvement is solely by reason of a dispute for representation between the respondent unions affiliated with American Federation of Labor (hereinafter referred to as "A. F. of L. Affiliates") and a union chartered by United Electrical and Radio Workers of America, an organization affiliated with the Committee for Industrial Organization (hereinafter called "C. I. O."). There is no issue as to wages,

hours, or the ordinary grievances between employer and employee. (Tr. 285-724.) The case is purely a controversy between rival unions (Tr. 269), C. I. O. seeking to organize a plant under contract with A. F. of L. Affiliates. Respondent, the employer, was the innocent victim of circumstances, but was found by the Board to have been guilty of unfair labor practices, and was ordered to reinstate, with back pay, certain employees, which order the Court below set aside.

Respondent in this brief, when referring to "old employees" and "new employees," will use those designations as does the Board in its decision and petitioner in its brief. (Br. 5, Note 3.)

The making of the 1935 and 1936 contracts is not questioned by the Board, either as to majority representation, or as to the independence of the employees in negotiating such contracts, and the Court below so found. (Tr. 871.) As to supplementing the 1936 contract and making the 1937 contract, the Board fails to give due consideration to the very important fact that both this supplement and the third contract were negotiated during the term of the 1936 contract, and substantially three months before its expiration, at which time A. F. of L. Affiliates were the duly selected and exclusive bargaining representative, and that in their selection as such, there is no charge of interference, assistance or coercion by respondent.

As a part of both contracts there was in each instance an oral agreement, the terms of which (Tr. 263-4-5, 868) respondent communicated to its employees, notifying them at the same time that *any* employee who did anything to disturb the peaceful and friendly relationship under the contracts, would be considered as working against the best interests of the company and subject to discharge. (Tr. 291.) The oral agreements provided that any employees not members of the union as of June 23, 1935, were not required to join, but having joined, or if joining later, were

bound to continue their membership and in the future, all new employees would be compelled to join A. F. of L. Affiliates. Respondent and the Board disagree regarding the extent, interpretation and effect of the oral agreements, and the notice thereof, as will be more fully brought out in discussing the Board's so-called findings of fact. The Court below, however, held the oral agreements to be as respondent contends, and that notice was given. (Tr. 868, 871 and 872.)

When the 1935 contract was made, the A. F. of L. Affiliates represented, and had as members, six hundred ten (610), out of a total of eight hundred one (801), employees, and in 1936, when the second contract was made, all but 38 or seven hundred seventy-one (771) employees out of a total of eight hundred nine (809). This representation was evidenced by cards signed by the individual employees, stating the employees' union membership and authorizing A. F. of L. Affiliates to act as the signer's bargaining agent "for one year and thereafter," which cards were in the form of A. F. of L's. Exhibit 2 (Tr. 865)[2] and were checked against payroll by respondent. (Tr. 867.)

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[2] AUTHORIZATION FOR REPRESENTATION

"I, the undersigned, employee of the Electric Vacuum Cleaner Co. employed as Assembler hereby authorize my

(Craft—Mechanic, Helper, or Apprentice)

Craft Organization, Affiliated with the American Federation of Labor

	Membership Fee
Metal Polishers International Union	$3.50
International Association of Machinists	3.75 and $5.00
International Molders Union of North America	3.00 and 5.00
Pattern Makers Association	5.00 and 7.00
Federal Labor Union	2.50

to represent me and, in my behalf, to negotiate and conclude all agreements as to hours of labor, wages, and other employment conditions. I also authorize the Company to deduct, within thirty days, from wages, due, the prevailing initiation or reinstatement

During March of 1937, there was, for the first time, some discussion among certain employees (Tr. 380), relative to organizing a C. I. O. union in the plant, and about sixty (60) of respondent's employees met with a C. I. O. organizer, as a result of which meeting, C. I. O. application cards were signed. (Tr. 445.) On Thursday afternoon, March 18th, there was a sit-down strike in the machine shop, which was participated in by "around ninety or a hundred" employees in that department. (Tr. 310.) On Friday, March 19th, the sit-down strike terminated, respondent agreeing to reinstate any discharged employees (Tr. 268), and late on Saturday afternoon, March 20th (Tr. 270), A. F. of L. Affiliates, as bargaining agent for the employees, served upon respondent a notice demanding that the plant be temporarily closed, Board's Exhibit 15. (Tr. 856.) Upon receipt of that notice on Saturday, respondent met with A. F. of L. Affiliates, and upon being advised that, unless the plant closed, employee members of A. F. of L. Affiliates would refuse to work (Tr. 273), the plant was closed and remained closed until April 5th. About April 3rd, supplementing the existing contract, it was agreed that all employees must be union members, so that the 38 employees, up to that time exempted, were included. The plant reopened in accordance with notices published in the Cleveland papers, Board's Exhibit 8 (Tr. 852), the notices reciting, among other things, that only

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fee of the organization as indicated hereon and transmit same to the authorized representative of the organization.

The full power and authority to act for the undersigned as described herein supersedes any power or authority heretofore given to any person or organization to represent me, and shall remain in full force and effect for one year from date and thereafter, subject to thirty (30) days written notice of my desire to withdraw such power and authority to act for me in the matters referred to herein.

Signature of employee.
(Union Label)

employees who were members of the crafts under contract would be employed.

Upon reopening, the majority of the employees reported promptly for work and were immediately put to work, and the places of those failing to report were filled by new employees, which new employees were later let out as the old employees returned. Between April 5th and May 20th, 1937, during which period the supplemented 1936 contract was still in effect, as the result of various meetings with A. F. of L. Affiliates, a third contract, on substantially the same terms, was negotiated with A. F. of L. Affiliates, Board's Exhibit 10 (Tr. 853), which contract when signed was approved by the individual signatures of nine hundred ten (910), out of ten hundred thirty-two (1032) employees, the approval being endorsed on separate copies of the contract, in the form following:

> "I, the undersigned, having read the above agreement, hereby approve the making of same by the Unions, and during the term covered by said agreement, and any renewal thereof, while I am in the employ of Electric Vacuum Cleaner Company, Inc., I irrevocably designate the Unions as my exclusive bargaining agent, and agree to abide by all of the terms and conditions of said agreement." (Tr. 43.)

At the time of the hearing before the trial examiner, nine hundred sixty-four (964) of respondent's employees had given their written approval of this contract (Tr. 838), which contract in effect was the same as the supplemented 1936 contract, requiring membership by all employees in A. F. of L. Affiliates.

It is to the supplementing of the 1936 contract, and to the making of the third contract, and events in connection therewith, that the Board's order was directed.

ANALYSIS OF, AND COMMENTS UPON, THE BOARD'S FINDINGS OF FACT.

The facts in this case will very largely determine its disposition, and an analysis of the Board's so-called findings of fact (which contain no record references), and the respondent's comments thereon, together with its references to the transcript, will materially help to clear the differences between respondent and the Board as to the facts and findings.

Through such an analysis, the conclusiveness of the Board's findings, whether they are supported by substantial evidence, and the consideration to be given by the Board to testimony excepted to as hearsay or rumors, can be considered under this Honorable Court's holdings in *N. L. R. B. v. Columbian Enameling & Stamping Company*, 306 U. S. 292, 300; 83 L. ed. 660, at 665, and in *Consolidated Edison Co. v. N. L. R. B.*, 305 U. S. 197, 229; 83 L. ed. 126, at 140.

Respondent regrets that such an analysis and comment may be tedious, but due to the form of the Board's findings, it is unavoidable.

In this connection, and before proceeding to consider the matters included in the so-called findings, respondent wishes to state, by way of an objection, that these findings in no way comply with the usual and accepted type adopted by the courts or prescribed by court procedure. *Norris, Jr. v. Jackson*, 9 Wall. 125; 19 L. ed. 608, 609; *Minchen v. Hart*, 72 Fed. 294; C. C. A. 8; *U. S. v. Sioux City Stock Yards Company*, 167 Fed. 126, 127; C. C. A. 8; *Corliss v. Pulaski County*, 116 Fed. 289 (C. C. A. 7).

Since the Wagner Act requires the entire transcript to be filed with the Court, it may well be argued that there is no more reason for the Board's findings to include evidentiary material, arguments, etc., than for any other finding to do so.

Respondent should be protected against having to defend itself against the injustice which may very easily result from the use of parts of the testimony of witnesses, with no accompanying citation to the record, references to briefs and to arguments, conclusions, repetitions, rumors and hearsay, such as are now included in the Board's findings. The Board's findings, conclusions and order occupy some sixty-eight pages of the transcript.

The only manner in which any analysis of and comments on the Board's findings can be presented, is by setting out in parallel columns, the findings in one column and the attempted analysis and comments in another, and this respondent has done in an Appendix attached to this brief.

The Board, in its brief under Questions Presented, Summary of Argument and Argument, proceeds upon the assumption that certain facts found by it are the facts disclosed and supported by substantial evidence, among the principal of which are:

(a) That the oral contracts of 1935 and 1936 were limited in their terms and applied only to new employees.

(b) That the oral contracts were secret and no notice of their terms was revealed to the employees.

In this connection

(a) It gives no consideration to and ignores the membership authorizations and powers of attorney signed by employees, members of A. F. of L. Affiliates, A. F. of L.'s Exhibit 2 (Tr. 865), and

(b) It does not give due consideration to the fact that the contracts complained of were negotiated *during the term* of a valid existing contract, with the exclusive representative of the employees, selected by an uncoerced majority.

The Board admits that the contracts of June 23, 1935 and July 6, 1936, were entered into upon the consideration that A. F. of L. Affiliates represented the majority of re-

spondent's employees; that such majority were members of the several unions; and that such majority was secured without the assistance of respondent; and does not claim that there were not outstanding and unwithdrawn on April 3, 1937, the authorized powers of attorney given when the second contract was made.

Respondent submits that its analysis and comments will develop the following, which it asks this Honorable Court to bear in mind, in the consideration of this case:

(a) That the terms of the oral agreements were as stated *supra*, pages 5 and 6, as will also be confirmed later when the making of the contracts is more fully presented. (Tr. 263-4-5, 750-51 and 811.)

(b) That employees had notice of the oral agreements clearly appears from the transcript references (Appendix, pages 51 and 54), and the Court below so found. (Tr. 868.) Notice was given through announcement to shop committees by Vice President Wilson, through foremen and through bulletin postings, as well as by A. F. of L. business agents who had access to the plant.

(c) That A. F. of L. Affiliates, in 1935 and 1936, were authorized to represent employees, was in each instance evidenced by individual powers of attorney, in the form shown in footnote 2, *supra*, page 6, and such authorizations were never withdrawn, and were compared by respondent against payroll lists as the 1935 and 1936 contracts were made. (Tr. 867.)

(d) That respondent, from the middle of March, 1937, to and including the making of the written closed shop agreement in May, had a valid contract, by the terms of which A. F. of L. Affiliates was the exclusive representative of all employees, selected as such by an uncoerced majority, the powers of attorney from which were then outstanding, and acted at the request of that representative.

Respondent's contentions with respect to the oral contracts, their terms, their application to old as well as new employees and notice thereof was sustained by the Court below. (Tr. 868, 871, 872 and 873.)

SUMMARY OF ARGUMENT.

The evidence establishes, and the Court below has found

(a) That new employees were required to join A. F. of L. after a two-week probationary period.

(b) That old employees, members of A. F. of L. Affiliates on June 23, 1935, or joining thereafter, were required to maintain their union membership.

(c) That old employees, not union members on June 23, 1935, were not required to join.

(d) That any employees were subject to discharge if they did anything to disturb respondent's friendly relations under its contract with A. F. of L. Affiliates.

(e) That the oral agreements were not secret, and the terms thereof were not kept from the knowledge of the employees.

(f) That the employees, by written cards, declared their union affiliation and authorized A. F. of L. Affiliates to bargain for them for a period of one year and thereafter, subject to withdrawal upon thirty days' written notice, which withdrawal privilege was not exercised.

(g) That the 1935-1936 contracts were negotiated with a labor organization not established, maintained or assisted by any unfair labor practices, and represented an uncoerced majority of the employees.

(h) That such relation existed at the time of the March difficulties and the supplementing of the 1936 contract and the making of the 1937 contract, and

(i) That the alleged unfair acts of the respondent were pursuant to its effort to live up to the terms

of its contract, and to the request of A. F. of L. Affiliates, the exclusive bargaining agent for *all* employees covered by such contracts when made.

Therefore, the Circuit Court of Appeals should be affirmed in its decree setting aside the Board's order eliminating the closed shop provision from the contract and requiring respondent to reinstate and provide back pay for some twenty-four (24) employees.

ARGUMENT.

Petitioner's brief, insofar as it has to do with construing the proviso in Section 8, Subsection 3 of the Act, is directed principally to the respondent unions, and to conserve the Court's time, this respondent will confine its consideration of that question principally to the facts, leaving the main discussion and presentation of the law to the other respondents.

POINT I.

THE 1936 CONTRACT, AS SUPPLEMENTED APRIL 3, 1937, AND THE CLOSED SHOP CONTRACT OF MAY 20, 1937, HAVING BEEN MADE DURING THE TERM OF A VALID CONTRACT WITH AN EXCLUSIVE REPRESENTATIVE SELECTED BY AN UNCOERCED MAJORITY, ARE LIKEWISE VALID.

The National Labor Relations Act seems clear and unambiguous in its defining of the conditions under which an employer may make a closed shop agreement with a labor organization. The restrictive interpretation contended for by petitioner, when considered on the facts in this case, places a limitation on the powers of an exclusive representative, which is contrary to the very purpose of the Act, for if industrial harmony is to obtain, a representative once selected and qualified should retain its powers during the full term of its appointment.

Consider the purpose of the Act.

> "• • • Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce, by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees," • • • (Section 1)

and as carrying out that purpose, Sections 7, 8 (1), 8 (3) and 9 (a).

These provisions, when read together, give employees, among other things, first, the right to bargain collectively, through representatives of their own choosing, the representative so chosen to be the exclusive representative of all employees; and second, a guarantee of these rights against employers' interference and discrimination in regard to membership in any labor organization, except that an employer may make an agreement with a labor organization (not established, maintained or assisted by an unfair labor practice) to require as a condition of employment, membership therein, *"if such labor organization is the representative of the employees as provided in Section 9 (a) in the appropriate collective bargaining unit covered by such agreement when made."*

Having in mind these provisions, what are the facts in the instant case?—In June of 1935, A. F. of L. Affiliates represented all but 191 of respondent's 799 employees, and in 1936, all but 38 of 809. This majority respondent demanded be established to its satisfaction as a consideration for its making the contracts, and this was done by submitting and checking cards, which disclosed not only the signer's membership in a craft union, but which also contained a power of attorney to A. F. of L. to act for the

signer for one year and thereafter, subject to a thirty-day revocation. The Board admits that in June of 1936, the time of making that contract, A. F. of L. Affiliates' majority of all but 38 of the employees, represented an uncoerced majority.

The oral agreement as made in 1936, contemplated, as has been stated before, that all employees, except the 38 who were not then members, were required to maintain their membership, any of the 38 who might join losing their exempt status, and new employees were required, after two weeks probation, to join. It was not, as the Board contends, a mere preferential shop with only new employees obligated to become members, but was practically a closed shop.

Accordingly, during the term of the contract, the union had the right to require those employees whom the Board found had been unlawfully solicited, to remain or become members, and further had the right to require their discharge for failure to join, which right the union exercised at a later date. If the discharges are considered to have taken place under the April amendment, that contract was valid, because at the time of its making, the A. F. of L. was assured of a majority of more than 90%, and no other group had made a majority claim. The only notice of any such claim had by respondent was the C. I. O. letter (Exhibit 11, Tr. 854), which respondent did not receive until April 5th, after the plant had reopened, and after agreeing to the April 3rd supplement. (Tr. 241 and 298.)

The Board does not deny that its decision and order would be unjustified if the oral agreement provided as respondents contend. What, then, did the uncontradicted facts show was the intention of the parties?

It is not disputed that both in 1935 and 1936, when the oral contracts were negotiated and renewed, the A. F. of L. had demanded a complete closed shop, and the evidence is also uncontradicted that respondent objected to a completely closed-shop contract *only* because such contract

would require certain old employees to join who had never belonged to any labor organization and who might not want to join any labor organization. (Tr. 750 and 811.) At the time of the negotiations there was no very detailed discussion of the obligation of employee-members to remain members, and the record, unfortunately, contains no testimony showing with any great degree of particularity what the understanding was in this respect. It is plain, however, that it was clearly assumed by and was the intention of the parties that present members would be required to remain members during the term of the contract (Tr. 871 and 873) and the parties distinctly so understood, and the employees were in substance so notified. That such was the case is obvious, as the unions were giving up the closed shop only as to employees not then members, and as the respondent's vice president stated, such employees were not, using his words, "compelled to join." (Tr. 265.) For the Board to find that the unions finally agreed that only new employees need become members is unrealistic and unreasonable in view of the fact that the only contention between the parties was as to the disposition of the old employees who had not joined.

It is further evidenced by the following undisputed portions of the testimony dealing with the subject of the intent of the oral agreement. Before setting forth this testimony it should again be pointed out that due perhaps to the very fact that it was assumed without discussion that employees who were members would remain members, the testimony is often confusing, but the meaning becomes clear upon reflection. For instance, when talking of the oral contract, the witnesses loosely refer to the employees who were not members at the time of the contract as "old employees," and, at other times, referred to all employees employed at the time of the contract as "old employees." When stating that under the oral agreement new employees were to become members and "old employees" did not have

"to join," obviously the parties meant by the term "old employees" the employees who never had joined, for the other "old" employees who were members already had joined and could not be required "to join." Further, if they were meant to be included within the term "old employees" as used above, the term "must remain members" could have been used instead of, or in addition to, the term "must join."

The only persons testifying concerning the scope and extent of the oral agreement were George Paulus, plant superintendent; R. B. Wilson, Vice-President and General Manager of respondent; Muehlhoffer, a union representative; and Ralph C. Gordon, union representative.

The testimony of George Paulus, plant superintendent, is as follows (Tr. 688):

"Q. In 1935, June, are you familiar with the contract that was made by the Company with various American Federation of Labor Unions?

A. Yes, sir.

Q. Will you tell us what that contract or agreement provided with reference to employees belonging to a union, if any?

A. It was a closed shop at that time.

Q. What do you mean by a closed shop?

A. A closed shop means that people that were working there—the new people coming in were to join the union within three weeks of the time they came there.

Q. How about employees that were with the company at the time this contract was made in June of 1935?

A. Those employees, the Union, as I understand it, tried to get those people to join the Union.

Q. There was no requirements that they join any union?

A. No, sir."

From this testimony it can be seen how the confusion, if any, arose as to which employees were not required to

join. All other witnesses, in referring to "old employees," referred to the fact that they "*could join,*" which would indicate, of course, that these employees previously were not members.

Muehlhoffer, a Union representative, testified that on the renewal of the verbal agreement "it was insisted again that some of the employees in that plant must come in to our organization." Obviously, here again we have a reference only to the old employees who never were members. He said, in substance, that when the 1935 contract was entered into, the organizations were asking for an entirely closed shop, the reason being that the polishers' union had already established that condition, but there were quite a few of the old men in the shop, in the other departments, that did not belong, and to require them to join might work a little hardship and "Mr. Tuteur, being a little chicken-hearted, feared to hurt these men in laying them off." (Tr. 811-12.)

The following uncontradicted testimony of R. B. Wilson, respondent's Vice-President and General Manager, illustrates the looseness with which the term "old employees" was used, and also indicates clearly and conclusively that only old employees who had not signed A. F. of L. membership cards at the time of either the 1935 or 1936 contracts were not compelled to join or remain affiliated with the A. F. of L. (Tr. 264-265):

> "Q. In your answer, you stipulated whereby you made certain provisions for such employees that did not become members of the majority; is that a fact?
>
> A. I am just a little hard of hearing. I did not hear the first part of your question.
>
> Q. I say when you signed this first agreement with the five A. F. of L. Unions, there was I am saying a minority group?
>
> A. Yes.
>
> Q. That did not sign with the majority, and there was some provision made for them; isn't that a fact?
>
> A. That's right.

Q. What was that provision?

A. To the effect that the *old employees* would not be required to *join* the union.

Q. Do I gather from your answer that the old employees did not join with the Federation?

A. *Old employees did.*

Q. But it is a fact that a distinct group of employees did not join with the majority?

A. I would not call them a group. I would say there were some employees in our plant that did not join. We did not think of them as a group and they were not a group, to the best of my knowledge.

Q. What was the attitude of the company on retaining those employees who did not sign as employees of the Electric Vacuum Cleaner Company?

A. They were permitted to continue with their jobs without discrimination.

Q. What do you mean by without discrimination? Was there any discrimination at the plant before this contract was signed?

A. No.

Q. Well, the company did not stop those employees who did not sign with any Federation or Local Union?

A. It was in no sense our business at that time. They were free agents, every one of them.

Q. And after the 1935 contract expired, you supplemented that by a new contract; is that right, Mr. Wilson?

A. Yes.

Q. And in 1936 the contract in substance was the same as the 1935 contract?

A. Yes.

Q. With the exception of foremen, or relatives of foremen, and the same provision and the same policies of the company as to such employees who were not members of any union was carried on during the period of 1936; is that right?

A. Except that new employees even from the period of the first contract were—the old employees were not compelled to *join* the union.

Q. New employees?

A. Yes.

Q. *But those employees that were then employees of your company in 1935 who were not members of any labor organization were not required to sign up with any labor organization in 1936 when the second contract was entered into; is that a fact?*

A. Right.

Q. And no discrimination was to be exercised by the company as to those employees?

A. You are right." (Emphasis ours.)

The foregoing testimony is uncontradicted, and the Board makes no attempt to explain it.

Finally, another portion of uncontradicted testimony by Wilson indicates quite conclusively that the substance of the oral agreement was that employees who were members of the A. F. of L. at the time of the contract, as well as new employees, were required to be members of the A. F. of L. (Tr. 291):

"Q. In other words, you stated at that time you had eight hundred and one employees and six hundred and ten from your information given you by the American Federation, signed up with these crafts, and the balance of approximately a hundred and ninety did not have any affiliations?

A. At the date of the signing.

Q. How was this notice given?

A. Verbally before the committee of employees, and posted on the bulletin board.

Q. Have you kept these posted on the bulletin board?

A. Kept them posted on the bulletin boards throughout the plant.

Q. Can you give us in substance what that notation said?

A. Yes; we informed our employees that we had entered into a contract with the various affiliated unions of the American Federation of Labor, having determined that the majority of the employees were members of those various organizations. *Having entered into such a contract, any person in our employ in the shop who did anything to disturb the peaceful*

and friendly relationship would be considered as working against the best interests of the company and as such were subject to discharge.

Q. Now, this contract that you entered into gave permission to the business representatives of these various Locals the right to enter in and upon the premises as they saw fit?

A. Yes." (Emphasis ours.)

The testimony of Ralph Gordon, union representative (Tr. 750-51) is similar to that of Wilson and emphasizes the fact that the only point of difference between the unions and respondent regarding the closed-shop issue was as to the 67 or 68 employees who did not want to belong to the union, and the union felt there was no use blocking all negotiations because of that difference alone. Gordon testified:

"A. That was the difference of not signing the agreement after the meeting on Thursday because the group wanted a strictly closed shop, and the management would not agree to it, and that was the dickering that we had forth and back, and finally the whole thing was that there was about sixty-seven or sixty-eight of all the employees who had not joined and we felt there was not any use of calling the plant closed until that was thrashed out. And we thought if we could not get these employees to join, then, of course, there was not any use of having them as members anyway."

The Keehl incident mentioned in the Board's decision (Tr. 163), as to the fact that the oral agreements required only new employees to become members is just as indicative that the oral agreement required old employees to be members, except those employed in 1935, who never were members.

Petitioner refers to the letter of Tuteur, respondent's president, to the Board's Regional Director in Cleveland, written June 12, 1936, more than a month before the 1936 contract was made, and long prior to any labor disturbance at the plant, in which letter the president refers to an oral contract and mentions only that new employees are obli-

gated to become members thereunder. This letter was written in confidence to the Board, and as an accommodation, and there being no duty on Tuteur's part to give the information, he was, no doubt, not as definite as he otherwise would have been. The fact that he mentioned only one aspect of the oral agreement can be explained by (1) as Muehlhoffer testified *supra,* page 18, "Tuteur being chickenhearted" would not require any old employees to join who were not then members, and knowing at the time of his letter that only a few were not union members, inadvertently failed to mention the understanding as to old employees, and (2) that he did not want generally known, to the trade and public, the company's contract, and he was on that account very sketchy in his statement.

The above constitutes all the evidence in the record on the question of the intent and purpose of the oral agreement. From this evidence—at best negative—the Board reached its conclusion that the oral contract required only new employees to join.

The decision of the Court below indicates quite strongly that it was the opinion of that Court as well, that the contracts extended much further than the Board concludes and were almost tantamount to a closed-shop.

> "The contracts were in the nature of closed shop agreements, for eventually, as old men dropped out, if the contracts were renewed a genuine closed shop would be established." (Tr. 871.)

Certainly, in referring to old members dropping out so as to create a genuine closed-shop contract, the Court must have been referring only to those old employees who never were members as being the only persons obligated to become or remain members. Otherwise, a genuine closed shop would not be achieved for two or three generations.

Finally, the Court specifically held that:

> "The Board, therefore, erred as to its order finding the respondent guilty of discrimination with reference

to 18 of the 24 employees named in the order because these 18 were members of A. F. of L. Affiliates, were bound by the contract until June 1937, *and were compelled to be in good union standing in order to continue in respondent's employ.*" (Tr. 873.)

All of the evidence bearing on the question of the scope and purpose of the oral contract has been set forth above, and that evidence is entirely insufficient to support the Board's conclusions. The Board can rely only on a negative—failure to specifically set forth the extent of the oral contract—while the positive evidence—both circumstantial and direct—indicates clearly and positively that the parties must have intended and had the semi-closed shop.

Respondent's making the contract on the consideration that it was exempting but 38 men from union membership, placed an obligation upon the individual employee union members, both under the contract and as signers of powers of attorney, to continue that relation, and inasmuch as respondent had, at its request, been shown and checked the individual powers of attorney, respondent did and was justified in relying upon the relation to continue.

The Board, in its brief page 42, note 29, in speaking of the membership agreement, concedes that by that agreement the members may have assumed an obligation to the union to remain members for a specified period, but that a breach of that membership, while, perhaps, subjecting the members to a claim for damages by the union, would not be a breach of the collective agreement with the employer. This might be true, if the membership agreement was nothing more than its name implied, but since it contains a power of attorney to the union, by virtue of which, as the member's attorney, the union negotiated a contract, and the employer accepted the contract on the assumption that the power of attorney was good for the term of the contract, then in the absence of a revocation of that power (and there was none in the instant case), the employee would be estopped to

deny the agent's continuing authority and would be bound by the acts of his attorney.

The petitioner, throughout this case, fails entirely to appreciate the importance and the significance of these powers of attorney. The respondent was not relying solely on the agent's selection by reason of being the representative of the uncoerced majority, but was likewise depending upon the authority vested in that representative by the individual powers of attorney.

The first contract having operated satisfactorily, a second contract was made for 1936-1937, upon substantially identical terms. The oral contract, as part of the second contract, was renewed. The unions again were required, in consideration of respondent's contract, to furnish proof that through their members they represented the majority of employees, and similar cards containing a power of attorney were again submitted and checked for all but 38 employees. In making the second contract, as well as the first, respondent is not charged with having assisted the unions, and there is no claim that the unions did not represent an uncoerced majority of the employees. So again, we have a legally established contractual relation for another year, with respondent being entitled to rely on that relation continuing for the term of the contract, and to act on that reliance.

Relations between respondent and its employees had been harmonious and undisturbed from the time of the making of the first contract in June of 1935, until March, 1937 (Tr. 285-724), at which time it developed that C. I. O. was in the plant, and an attempt was being made to organize the plant in the face of respondent's then standing contract with A. F. of L. Affiliates, and that such raid was in progress was called to the attention of respondent's vice-president, Wilson, by A. F. of L. Affiliates, the day before a sit-down strike occurred in one department:

"That meeting, on the morning of Thursday, March 18th, I believe was the date Mr. Muehlhoffer, Mr. Rhinehart and Mr. Newman came to my office representing the Polishers group, and advised me that there was some agitation in the machine shop, which was the first knowledge of any sort that I had had of any such agitation or disturbance. I was caught entirely flat-footed. I told them, in effect, that I considered them to be unduly alarmed, and everything that was said at that meeting had to do with allaying their alarm, and sending them back to work, and I told them that we would proceed to investigate the matter, and that was all that took place at that meeting." (Tr. 681-2.)[3]

What respondent did during the period complained of was at the request of A. F. of L. Affiliates, and was done in reliance that they then, and until the end of the term of the contract the following June, were the duly designated exclusive bargaining agent.

Under the foregoing facts, can it reasonably be claimed that, during the term of the contract, and at a time when the A. F. of L. Affiliates was the exclusive collective bargaining representative for all employees, respondent could not consent, as requested by that representative, to supplement an existing agreement, so as to require the few old employees not then union members to become union members, thus establishing, in effect, a substantially closed shop, and later, during the term of the supplemented contract,

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[3] The meeting concerning which Wilson was testifying, as above, is the same meeting to which the petitioner refers in its brief, in Note 12, at Page 17. In that note Wilson is quoted as saying "He was going to make them join the American Federation of Labor union, and if they don't he would fire one or two so the rest of them will join." An examination of the record will disclose that one Behrse said that Newman, who claimed to have been present at the meeting with Wilson, told him he heard Wilson make this statement. The statement is not only denied by Wilson (Tr. 681), but Behrse's testimony was accepted over respondent's objection that it was hearsay. Newman was not called by the Board.

make the May contract, which was a written contract, embodying practically the same terms as the 1936 agreement, written and oral, as supplemented April 3rd? *The employees had, since June of 1935, been asking for a closed shop, and the Board found that such a demand was presented when the first contract was made in 1935* (Tr. 160) *and was renewed in 1936.* (Tr. 161.) *Respondent was therefore then consenting to accept, as part of its contract, a provision which the bargaining representative had for two years been seeking to get. It was no new development.*

The following cases are cited, not as controlling upon this Court, but merely to indicate that the present policy of the Board, as it now interprets the Act, is not contrary in its general principles to the theory upon which this case was decided by the Court below.

In the Matter of J. E. Pearce Contracting and Stevedoring Company, Inc., and International Longshoremen and Warehousemen's Union, Local 2-5, decided February 29, 1940, and reported in 20 N. L. R. B. 1061, the headnote of which reads:

> "Stevedore Industry—Interference, Restraint, and Coercion: charges of, dismissed—Discrimination: employer's reliance upon a preferential-employment contract in awarding preference in employment to members of contracting union held valid despite transfer of allegiance by a substantial number of the members of the contracting union to another labor organization; disestablishment of contracting union by International and substitution of a new local in the place of the contracting union as a disciplinary measure against employees who transferred their allegiance, held not to dissipate the preferential-employment contract—Collective Bargaining; charges of refusal to bargain collectively dismissed—complaint; dismissed."

The contract in the cited case was made in September, 1937, the acts complained of occurred in July, 1938, and the contract was renewed in September, 1938. There was

no claim that when the contract was executed in September, 1937, the union was assisted by any unfair practices or that it did not represent a majority, and it was therefore held to come within the proviso of Section 8 (3) of the Act. The board in supporting its decision refers, among other cases, to *M. & M. Woodworking Company v. National Labor Relations Board,* 101 F. (2d) 938 (C. C. A. 9), and *In the Matter of Ansley Radio Corporation,* 18 N. L. R. B. 1028.

The following three cases, while they involve discharges for union activities, nevertheless very significantly consider the proviso in Section 8 (3) and the matter of notice of contracts, and on a basis favorable to respondent's contention: *In the Matter of Motor Products Corporation,* 34 N. L. R. B. No. 120; *In the Matter of Weirton Coal Company,* 34 N. L. R. B. No. 121; and *In the Matter of International Envelope Corporation,* 34 N. L. R. B. No. 122.

The cases relied upon by petitioner to establish the illegality of respondent's acts and of the contracts are distinguishable on the facts.

The Court below in its opinion considered *International Association of Machinists v. N. L. R. B.,* 311 U. S. 72, 85 L. ed. 50.

In *N. L. R. B. v. J. Greenebaum Tanning Company,* 110 F. (2d) 984 (C. C. A. 7) certiorari denied, 311 U. S. 662, the employer participated, to a certain extent, in the formation of a new association, a membership campaign being carried on in the presence of the company's foreman and on company time, and with management participation in the solicitation, which was not only prior to the contract but assisted in securing a majority.

The facts in *Warehousemen's Union v. N. L. R. B.,* 121 F. (2d) 84, 87, App. D. C., certiorari denied, clearly indicate that the issue decided was that the teamsters'

union did not represent a majority of the employees at the time the contract was made.

None of the foregoing three cases, as the respondent reads them, holds that under the fact situation in the instant case majority status and absence of assistance are independent conditions precedent to the validity of a closed-shop agreement, as the petitioner contends.

In *N. L. R. B. v. Waterman Steamship Corporation*, 309 U. S. 206, 84 L. ed. 704, the preferential contract provided "contract not to be construed to require the discharge of any employee who may not desire to join (I. S. U.)," and there was considerable doubt whether A. F. of L. represented the majority of employees at the time of the alleged unfair acts, there having been a waiver of right to rely on the preferential contract by filing a petition requesting an election. There were no authorization powers of attorney and no partial closed-shop agreements, as in the instant case.

The same is true in *South Atlantic Steamship Company v. N. L. R. B.*, 116 F. (2d) 480 (C. C. A. 5) certiorari denied, 313 U. S. 582, there being in that case great doubt as to the majority representation. There was likewise no closed-shop as to any employees, and as in the instant case, no unrevoked authorization powers of attorney.

In the instant case, the unrevoked powers of attorney secured without assistance by respondent, respondent's action being in furtherance of a valid contract and with the representatives of an uncoerced majority, and the contract in any event being closed-shop as to all but 38 employees, brings the case within the provisions of the Act and the contract and respondent's conduct in connection therewith are not condemned by the Act.

Petitioner, in its brief page 11, makes the statement "Concerning the presence of substantial evidence to support most of the Board's finding of fact, there is no dispute.

While the Court below concluded that the company had not violated the Act, its decision was not based on a holding that supporting evidence was lacking."

Respondent excepts emphatically to this statement. The Board based its decision on a contract, the terms and interpretation of which are not only contrary to what evidence shows, but are also contrary to the holding of the Court below. The same is true as to the powers of attorney which respondent insists, and the Court below found, are material to a determination of this case, but which the Board ignores.

The Court, with respect to the contract, held as shown *supra*, and with respect to the powers of attorney and their effect:

> "The legal conclusion made by the Board that the members of the A. F. of L., after the 1935 and 1936 contracts were executed, were free to abandon such membership at will, when considered in the light of the authorizations signed by the men and the total failure to file withdrawals in accordance therewith, is plainly erroneous. So far as the understanding of the parties illuminates the meaning of the obligation, it is that the men were bound for the period defined in the authorizations. There was no testimony to the contrary." (Tr. 871.)

> "At the time that some of the old employees called a C. I. O. organizer into the plant, all but 38 of the employees working when the 1936 contract was executed had signed written authorizations, as hereinbefore described. These authorizations, running for a term of one year and thereafter, could be withdrawn upon thirty days written notice; but the record presents no such withdrawal. The term of one year was reasonable and the authorizations were in every respect legal." (Tr. 872.)

The general and established principles of jurisprudence have not been swept aside by the provisions of the National Labor Relations Act, and the contracts in this

case are to be interpreted and controlled not by any special principles applicable to labor only, but by the general and established principles of law, and are entitled to the same construction and protection before the Board, as they would be before any other tribunal.

So, also, the powers of attorney, from the individual employees to the unions, demand full honor and recognition by the Board, and the Board is bound by their legal effect.

That the Board has applied its own principles of law is not open to serious doubt, when its statement with respect to the doctrine of notice and principal and agent is considered: "But in any event narrow common law concepts of principal and agent do not furnish a proper basis for limiting the protection of employees under the Act. * * * Whatever the rules of imputed knowledge at common law may be, it is reasonable to construe the proviso of Section 8 (3) as the Board did, * * *" (Br. 49) and this attempted justification is not upheld by the language quoted by the Board from the case of *International Association of Machinists v. N. L. R. B.*, 311 U. S. 72, 80, 85 L. ed. 50, 56.

From June of 1935 to April, 1937, respondent had a valid partial closed-shop contract, which, on April 3rd, was not abandoned, but was orally supplemented so as to be substantially a closed-shop contract, and in May of 1937, was reduced to writing. The 1936 contract and supplement, and the May contract, were made with the *then* exclusive representative of all employees selected by an uncoerced majority, which representative was further fortified as such by the separate powers of attorney from each individual employee, who made up that majority; those powers of attorney were never withdrawn, and by virtue thereof, that majority of necessity continued so long as those powers were outstanding, namely, during all the times complained of.

The 1936 contract, which was a valid one, was likewise in effect at all the times complained of, and respondent's

cooperation was given, at the request of the then duly authorized representative of an uncoerced majority of employees, as well as the then exclusive representative of all employees, and did not contribute to or assist in establishing or maintaining the exclusive representative capacity of that representative or securing the amendment and third contract.

In the light of the purpose of the Act, and applying its provisions to a contract made under the foregoing conditions, the labor organization being as in Section 8 (3) required and the representative of the employees as provided in Section 9 (a), in the appropriate collective bargaining unit covered by such agreement *when made*, the contract in the instant case meets the test and is valid.

POINT II.

RESPONDENT'S COOPERATION WITH A. F. OF L. AFFILIATES WAS PERMISSIBLE, AND WAS NOT ASSISTANCE SUCH AS IS CONDEMNED BY THE ACT.

If the reasoning of respondent in Point I is sound, then its conduct and cooperation with A. F. of L. Affiliates, at their request, was proper and harmless, inasmuch as A. F. of L. Affiliates without respondent's assistance was then and at all the times, during which respondent was charged with unfairness and coercion, the duly acoredited and exclusive bargaining representative for all employees, under Section 9 (a) of the Act.

As bearing on respondent's relations to its employees and conduct, it must be considered

(a) That respondent had no union preference until after the signing of the valid contract of 1936, which represented the choice of 85% of respondent's employees. (Tr. 874.) Under such conditions respondent was bound to prefer A. F. of L. Affiliates.

(b) That there was no wage or other dispute. (Tr. 724.)

(c) That respondent's relations with its employees, since June of 1935, had been harmonious. (Tr. 285.)

(d) That the first and only break in its continuous good relations with its employees from June of 1935 was by reason of differences between C. I. O. and A. F. of L. Affiliates, as to A. F. of L.'s representation contract and membership, as a result of which respondent's plant operations were disrupted and the contract under which the vast majority of its employees were working, and with the terms of which they were satisfied, was threatened, and

(e) That A. F. of L. Affiliates, by virtue of the unrevoked powers of attorney upon which respondent relied, as well as by a valid contract then in effect was then, and at all times during the period in question, the exclusive bargaining representative of respondent's employees. It was the exclusive bargaining agent of all employees selected by an uncoerced majority, which majority in March of 1937 was just as large as it had been in June of 1936. It was such representative when the alleged offending contracts were made.

The making and terms of the 1935 and 1936 contracts having been previously reviewed, the Court's consideration is directed to occurrences in March of 1937.

In March 1937, respondent's business had been increased to the extent that there were about one hundred more employees than in June of 1936, and this situation coming to the attention of the business agent of the Machinists' Union, he talked with Paulus, respondent's superintendent, who, on the union's request, called on some of the old and trusted employees to cooperate with him and with the representative of the Machinists' Union in signing up these new employees. (Tr. 689.) Paulus had no means of knowing whether the old employees upon whom he called were union men or not.

There is no testimony, except hearsay, and a few instances which are specifically denied by the persons charged

with having made them, that any of the old or the new employees for that matter, were threatened with the loss of their jobs if they did not join A. F. of L. Affiliates, until we come to the Ramsey case. The C. I. O. drive was then in full swing. Ramsey, at the request of A. F. of L. Affiliates, was probably discharged, but this discharge was not effective for any length of time, and he would have returned to work promptly without any loss of time had it not been for the sit-down strike. As it was, he returned to work when the plant reopened on the 5th of April, and has been with respondent ever since. There is no claim whatever that he suffered any loss of time by reason of his difficulty with the union representatives, and with this the Court below was in agreement. (Tr. 873.)

It is not clear whether or not a sit-down strike had occurred before or after Ramsey's discharge, or whether, even though Wilson so testified, he understood it was the cause of the sit-down.

At any rate, on March 19th, the morning after the start of the sit-down strike, Chief of Police Corlett discussed with respondent and A. F. of L. Affiliates matters relating to the sit-down and Wilson testified, "Chief Corlett came to us from Mr. Scott and stated that if we would agree to take back two employees who had been discharged—only one had been discharged but there were two mentioned in this particular transaction, who the second one was I don't know—if those people would be taken back without discrimination, the plant would open up, and we said that we have no objection, to refer the matter to the American Federation of Labor, who said they had no objection, and on that agreement the plant was evacuated."[4]

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[4] There is no competent testimony to support the Board's claim (Br. 17-18) as to reinstatement of employees, and employees "to have the right to join any union of their own free will." See Appendix pages 73 and 74, for discussions and references.

The next afternoon, A. F. of L. Affiliates served notice, and demanded that respondent close its plant (Tr. 272-3), and the plant was closed. The Board (Br. 18) admits this notice to close was a surprise to respondent, as up to that time, namely, late Saturday afternoon, March 20th, respondent had no notion other than that the plant would continue operations the following Monday.

The Saturday before the plant was reopened, the oral contract was supplemented to the extent that it became to all practical purposes, a closed-shop contract, in that old employees having joined unions were still required to maintain their membership, new employees were still required to join and the 38 employees not theretofore required to belong to the union were now required to join. The method of reopening the plant was considered, and as part of the mechanics, it was agreed that employees would be given clearance cards, and permitted to return to work, the issuance and furnishing of such cards being left entirely to A. F. of L. Affiliates, their decision being final. (Tr. 295 and 828.)

An office across from the entrance to the plant was opened by A. F. of L., from which clearance cards were issued during the first week. There was much confusion and naturally considerable difficulty in getting the plant into operation, with which condition respondent was much concerned, as were the employees. To bring about peace, and hasten full plant operation, the representatives of A. F. of L. Affiliates and C. I. O., without consulting respondent, had several meetings at the Hollenden Hotel with the Regional Director of the National Labor Relations Board, and as a result of those meetings, it was agreed that all employees would be cleared and could return to work. Respondent had no part in and attended none of those conferences (Tr. 328, 392, 459, 466, 486 and 541), and Behrse, one of the Board's witnesses, testified that as a result of the peace conferences, C. I. O. told their members

to go back to work and to join A. F. of L. (Tr. 576, Appendix, pages 92 and 93.)

In other words, the employees and quarreling unions had seemingly decided to quit fighting.

Respondent continued to bargain with A. F. of L. Affiliates, and after the plant reopened certain wage adjustments were made and horizontal wage increases given (Tr. 683-4), and on May 20, 1937, the third contract was entered into, which was a reduction to writing of the written and oral contract of 1936 as supplemented, and was a closed-shop agreement, rather than a closed-shop as to some employees and a maintenance of membership as to others. This contract was approved by the individual signatures of 964 out of 1030 employees, the approval being in the form *supra*, page 8.

From these facts, can it be fairly said that employees were denied the right of self organization, particularly when it is considered that the employees had been organized since prior to the adoption of the Wagner Act, and through a series of contracts made with the exclusive bargaining representative selected by an uncoerced majority, had been bargaining with respondent continuously? Neither did respondent's conduct in any way contribute to the selection or the powers of such representative.

When Paulus was advised of the sit-down strike, he went into the shop and told all the men to go home and return in the morning (Tr. 692), which instruction in itself would indicate that no one was then considered discharged, but a small group in disregard of Paulus' instruction continued the sit-down strike, apparently having made up their minds to strike regardless.

The Board contends that the respondent with no good cause closed its plant after March 19th, to coerce its employees, and that it was a lock-out, which statement does not accord with the facts. Due to one union attempting to sign up members of the other, and to usurp the position of

the other as exclusive bargaining representative, respondent was caught between the two factions and the quarrel was one in which it had no part and over which it could and did have no control. The closing was not due to any suggestion or desire on respondent's part, but was the result of a demand by the exclusive representative of respondent's employees, backed up by a refusal to work. Such a closing is in no sense a lock-out, nor did it evidence any hostility on the part of respondent towards C. I. O.

In reopening the plant, employees were not discriminated against because they chose to exercise their right of self organization. Clearance cards were available. As to the employees required by the contract to belong to the unions (new employees or old employees who were members in June of 1935, or had joined subsequently), if the union insisted that in order to return, these employees put themselves in good standing, it was no concern of respondent's, inasmuch as such requirements were included in the provisions of the 1936 contract, prior to its having been supplemented, and as to the 38 employees required by the supplement to become union members, that was a requirement for which the exclusive bargaining agent had the right to negotiate, and which, as has been pointed out earlier in this brief, the employees' representative had been seeking since 1935.

With respect to the employees' freedom of choice, consider the terms of the contract. It is true that prior to being supplemented on April 3rd, it was partly what was then known as preferential closed-shop, and partly what is now sometimes known as a maintenance of membership contract, but under the facts was this contract, insofar as it required membership or maintenance of membership as to certain employees, any different than a closed-shop as to those employees? The employees, through their own voluntary organization prior to the supplement of April 3rd, had restricted their freedom of choice to the extent that so far

as union affiliations were concerned, there was no freedom left to old employees that had joined unions and for new employees, and as to the few employees not required to be union members they, by continuing to work in the face of respondent's announcement that any employee was subject to discharge who did anything to disturb respondent's relations under its contract, were to that extent restricted. Finally that few employees, by the supplement, were bound by the closed-shop negotiated by their representative.

Since the A. F. of L. Affiliates undisputedly represented an uncoerced majority, a majority which had neither been obtained nor maintained by respondent's assistance, respondent had the right at the request of and with such representative, to supplement its contract and to later combine the written and supplemental oral contract of 1936 into the written contract providing for a closed-shop as to all employees. The Board's theory that any assistance whatsoever, regardless of its effect or relation to the majority, incapacitates a labor organization entering into a closed-shop contract, is manifestly contrary to the provisions and purposes of the Act.

The decision of the Court below in holding that such assistance as there may have been in the present case was valid, for the reason that it was rendered at the request of the then exclusive bargaining representative during the existence and in furtherance of a valid exclusive bargaining contract, and during the existence of individual powers of attorney signed by more than 90% of the respondent's employees, is right and its decree should be affirmed.

Congress, in passing the Act, was concerned primarily with seeing to it that collective bargaining representatives are freely chosen. Once that objective has been attained, the right of such representatives to bargain is not to be restricted, and employees are controlled and must abide by the judgment and action of that representative.

POINT III.

RESPONDENT DID NOT DISCRIMINATE AGAINST TWENTY-FOUR EMPLOYEES IN REGARD TO HIRE AND TENURE OF EMPLOYMENT, AND THE BOARD'S ORDER TO REINSTATE WITH BACK-PAY WAS PROPERLY SET ASIDE.

As has been shown, respondent had no union prejudice. It was willing to deal with any union, provided that union was the exclusive bargaining representative of its employees. Its prime consideration is to avoid involvement in the contest between C. I. O. and A. F. of L. Affiliates, and being penalized with a back-pay order, after having conducted itself in a manner it believed proper under its contract. The sit-down strike was not the result of any dispute with it, but was due to a quarrel between two unions, as was the closing of the plant.

Respondent is the innocent victim in this union controversy, and is forced to defend itself in a case in which its only interest should be the determination of whether or not its contract was valid, and with whom it might bargain.

If respondent's position is as urged under Points I and II, there is no question of reinstatement or back-pay. If, however, this Honorable Court should reverse the Court below, there then arises the matter of reinstatement and back-pay, and the correctness and extent of the order entered by the Board with respect thereto.

So far as reinstatement is concerned, respondent has never had any objection to taking back any employees, provided such reinstatement would not constitute a breach of its contract. In any event, since this matter is solely a dispute between unions, and being purely personal to the employees, the Board, under the circumstances, at the most should have provided for reinstatement only, and, even if back-pay was included, the order should not have applied to more than the three or four employees exempt from union membership under the terms of the contract as it was at the

time immediately following the readjustment of the sit-down strike.

Classifying the employees covered by the Board's order, it is admitted that nineteen were old employees and five new, and that of the old employees, sixteen were members of A. F. of L. Affiliates, and of the new employees, two were members, there being in all eighteen union members.

Considering first the old employees, these employees had, by their powers of attorney, designated the respective unions to represent them, and should not now be heard to object to a contract and its enforcement, upon terms agreed upon by their representatives.

The petitioner's argument that the so-called invalid closed shop contract of April 3, 1937, was the sole basis for imposing union membership does not follow from the facts. Nor is petitioner correct in stating that the Court's finding, that union members were obliged to stay members, was reached as the result of "an implied term" of the 1936 collective agreements. What the Court did say in addition to the reference to an "implied condition" was

> "Old employees of whom some 67 did not wish to join, should not be compelled to do so." (Tr. 868),

indicating thereby that those who did join would be by the contract required to remain members.

> "So far as the understanding of the parties illuminates the meaning of the obligation, it is that the men were bound for the period defined in the authorizations. There was no testimony to the contrary." (Tr. 871.)
>
> "In the instant case, it was reasonable that these men should agree to exempt from the requirement of union membership the older men whose unwillingness to join A. F. of L. was preventing the settlement of the strike initiated by Mechanics Educational Society, and the exemption in no way affects the legality of the agreement." (Tr. 872.)
>
> "The Board therefore erred as to its order finding respondent guilty of discrimination with reference to

18 of the 24 employees named in the order, because these 18 were members of A. F. of L. Affiliates, were bound by the contract until June, 1937 and were compelled to be in good union standing in order to continue in respondent's employ." (Tr. 873.)

The sixteen employees were nearly all polishers, and had been suspended or were under charges by their respective unions, and as such were unable to secure clearance cards, which situation was not chargeable to respondent, since under the contract, as unsupplemented, they were required to maintain their union status. Of the sixteen, Frederick Frank (not because of any threat, Tr. 340) having joined A. F. of L. Affiliates on March 18, 1937, might be considered a border-line case, and if his union status was questionable, there would be four in the so-called old employee immune class: Frank, Edward Koutnik, John Kearn and Nicholas Kozma. If, however, the April 3rd supplement provision was valid, then all, including these four, not qualifying under the closed-shop arrangement, were properly refused clearance cards and would have no claim.

Of the five new employees, two, as stated above, Pierret and Jewel Smith, had joined A. F. of L. Affiliates within two weeks after their term of employment began, and under the 1936 contract, as unsupplemented, these men, if unable to procure clearance cards by reason of suspension from their unions, or for any other union cause, would have no complaint. The remaining three, Washko, Mitchell and Rummel, being new employees, were required to be union members, and under the contract, whether before or after supplementing, would have no claim.

With respect to Rummel, one of the new employees, the Board ordered back-pay for him for the short period he was out of respondent's employ, he having returned and being employed at the time of the hearing before the examiner. In making its order, the Board awarded him back-pay in full, although for two weeks of the time in question he was in the hospital. (Tr. 666.)

The Board, as justifying its order, insists that as to the old employees, union or non-union, the 1936 contract did not apply, and that the supplement thereto was invalid; that the provisions of the 1936 contract as to the new employees, was secret and therefore not binding, and if binding, that it had been abandoned and the supplement was invalid. Respondent's position with respect to these contentions having been set out in Points I and II, a repetition here is unnecessary.

Respondent respectfully insists therefore that if the April 3rd supplement should be found to be invalid as contended for by the Board, there was no abandonment of the 1936 contract by respondent, which contract applied to certain old as well as new employees, and in such case there would be involved at most four men: Frederick Frank, John Kearn, Edward Koutnik and Nicholas Kozma. If the Court should find the 1936 contract was abandoned, and, in addition thereto, that, when the plant was reopened, A. F. of L. Affiliates was not the then exclusive representative of the employees, and that the powers of attorney outstanding as of that time did not maintain them as such, so that the complete closed-shop arrangement was improper, then, under the circumstances, it is respondent's contention that the most extreme order which the Board should have entered in any event was an order of reinstatement only. Any order involving the requirement of back-pay, when considered in the light of the facts in this case, would be penalizing the employer rather than effectuating the purposes of the Act.

POINT IV.

IN THE EVENT THE ORDER OF THE BOARD IS TO BE ENFORCED, IT SHOULD BE MODIFIED NOT ONLY IN THE RESPECT SUGGESTED UNDER POINT III, BUT RESPONDENT LIKEWISE SHOULD BE RELIEVED FROM ANY PAYMENT FOR A PORTION OF THE PERIOD PRIOR TO MARCH 16, 1939.

The hearing before the Examiner was begun June 10, 1937, and concluded June 18, 1937. (Tr. 153.) November 1, 1937, no intermediate report having been filed by the Examiner, the Board transferred the proceedings to Washington. (Tr. 47.) On July 7, 1938, some seven months after the proceedings had been transferred to Washington, and thirteen months after the conclusion of the hearing before the Examiner, the Board issued a final decision and order. (Tr. 48.) To this final order respondent, on July 16, 1938, excepted, on the ground that there had been no intermediate report filed by the Examiner prior to the final order, and that the issuing of the final order, having been delayed for thirteen months, due to no fault whatever on the part of respondent, the delay was prejudicial. (Tr. 75.)

The exception was overruled on August 23, 1938 (Tr. 79), and on February 2, 1939, respondent filed in the Circuit Court of Appeals its petition to review the Board's order, showing therein its exception to the thirteen months' delay, and the failure to file an intermediate report.

The Board, on April 11, 1939 (Tr. 82 and 220), vacated the final order entered July 7, 1938, and upon the Board's motion, on May 9, 1939, respondent's petition to review was dismissed by the Circuit Court of Appeals. (Tr. 223.) The reason given by the Board for the vacation of its order of July 7, 1938, was that no intermediate report had been filed by the Examiner, and that it desired to give the entire case further consideration (Tr. 222), in effect thus sustaining respondent's exception filed July 16, 1938.

On June 21, 1939, a proposed finding and order were issued (Tr. 83) to which proposed finding and order the respondent, on July 10, 1939, filed its exceptions, on the ground that the Board in failing to decide this case for thirteen months after trial and by delaying and preventing respondent's attempt to review the order by reopening the case and entering a proposed order substantially the same as the original order, had prejudiced respondent with respect to the sum it would be required to pay in back wages, if the order was sustained. (Tr. 144-5.) These exceptions were overruled in part by the Board in its order entered December 21, 1939, which is the Board's last order. By the terms of that order the Board gave some consideration to respondent's exception in that it suspended a part of the period to which the back pay order applied:

> "However, since we, on our motion, gave notice on March 16, 1939, of intention to vacate, and on April 11, 1939, vacated the decision and order issued by the Board on July 7, 1938, the respondent will be relieved from paying said employees back pay with respect to the period from March 16, 1939, to the date of our present order." (Tr. 209.)

The respondent refers the Court to the statement of the case made in the early part of this brief, page 3, in which the exceptions just referred to are set out in full, which may be more convenient for reference than to the transcript.

The Wagner Act recognizes the need for promptness in deciding labor controversies and that the courts, on petition to review, will consider and grant relief against the hardships imposed by unnecessary delay has been decided in the case of *National Labor Relations Board v. National Casket Company, Inc.*, 107 Fed. (2d) 992; C. C. A. 2:

> "Where complaint of National Labor Relations Board charging unfair labor practices involves grant-

ing of affirmative relief against employer, case should be prosecuted to conclusion with as much expedition as is reasonably practical, inasmuch as any unnecessary delay results in obvious hardship to employers. National Labor Relations Act, 29 U. S. C. A. § 151 *et seq.*"

The court saying at page 995:

"When a complaint involves the granting of affirmative relief against an employer, it is particularly desirable that the case be prosecuted to conclusion with as much expedition as is reasonably practicable, for any unnecessary delay results in obvious hardship to the employer, since the longer the delay the larger the sum he must pay as wages for work never performed, if the order requires reinstatement of employees with back pay. But the fact that there appears to have been unnecessary delay on the part of the Board in the case at bar has not been urged by the respondent as a factor to be considered by the court in passing upon the Board's petition for enforcement of its order, and we shall assume that any such delay is immaterial."

The delay in the cited case is similar to that in the instant case. Four years elapsed between the filing of charges and the hearing in the Circuit Court of Appeals.

In *National Labor Relations Board v. Suburban Lumber Co.*, 121 Fed. (2d) 829, C. C. A. 3, delay was complained of, but it related to enforcement and not proceedings before the Board and relief was denied, since the company had the right to appeal, if prejudiced.

Relief for delay was denied in *Triplex Screw Co. v. National Labor Relations Board*, 117 Fed. (2d) 858, C. C. A. 6, on the ground that the Act places no time on the Board for rendering decisions. The instant case, however, is concerned with a delay caused by the Board's carelessness, which the Board recognized, but, as respondent contends, insufficiently.

There was no excuse for the Board's delaying a decision in this case for thirteen months, nor for a final order being filed without an intermediate report. There is even less excuse for the Board, eight months later, vacating that order, on the ground that no intermediate report had been filed, when this omission had previously been called to its attention by respondent's exception.

If the order in this case is sustained with respect to back-pay, it should be suspended at least from the date of the exception to the Board's failure to file an intermediate report, July 16, 1938, instead of from March 16, 1939, and, in addition thereto, for a substantial portion of the thirteen months' period between the conclusion of the hearing before the Examiner and the entering of the first order.

The foregoing contention was urged in the Court below but in view of the decision there, was not passed on.

CONCLUSION.

Respondent had no labor trouble from June 1935 to March 1937, and since March has had no trouble. Its employees were organized, and, without any interference or coercion by respondent they had freely selected their bargaining representative, who held powers of attorney for all but 38 employees and who was recognized by respondent and entered into a contract. There is no controversy as to wages, hours or working conditions. C. I. O. attempted to organize respondent's plant in the face of an existing contract with A. F. of L. Affiliates, which contract had been entered into in June of 1936, and by its terms did not expire until June of 1937. The ensuing trouble was due entirely to the dispute between the two unions. Upon reopening the plant, there were the usual difficulties and delays incident to such union quarrels. Out of 950 or more former employees, all but 28 had returned to work by May 20, 1937, at which time 964 out of a total of 1032 persons

then employed had signed a new contract, in terms substantially the same as the 1936 contract, as supplemented to carry on for the short period remaining of the term of the 1936 contract and for the succeeding year. The National Labor Relations Act was not intended to persecute employers—and to enforce the Board's order in this case would be persecution.

The respondent has not denied its employees the right to organize, has not discriminated against them in regard to their hire and tenure of employment, and has conducted itself as provided by and in furtherance of its contract. Its present contract is valid under Section 8, subdivision 3 of the Act, and the decree of the Court below setting aside the Board's order should be affirmed.

Respectfully submitted,

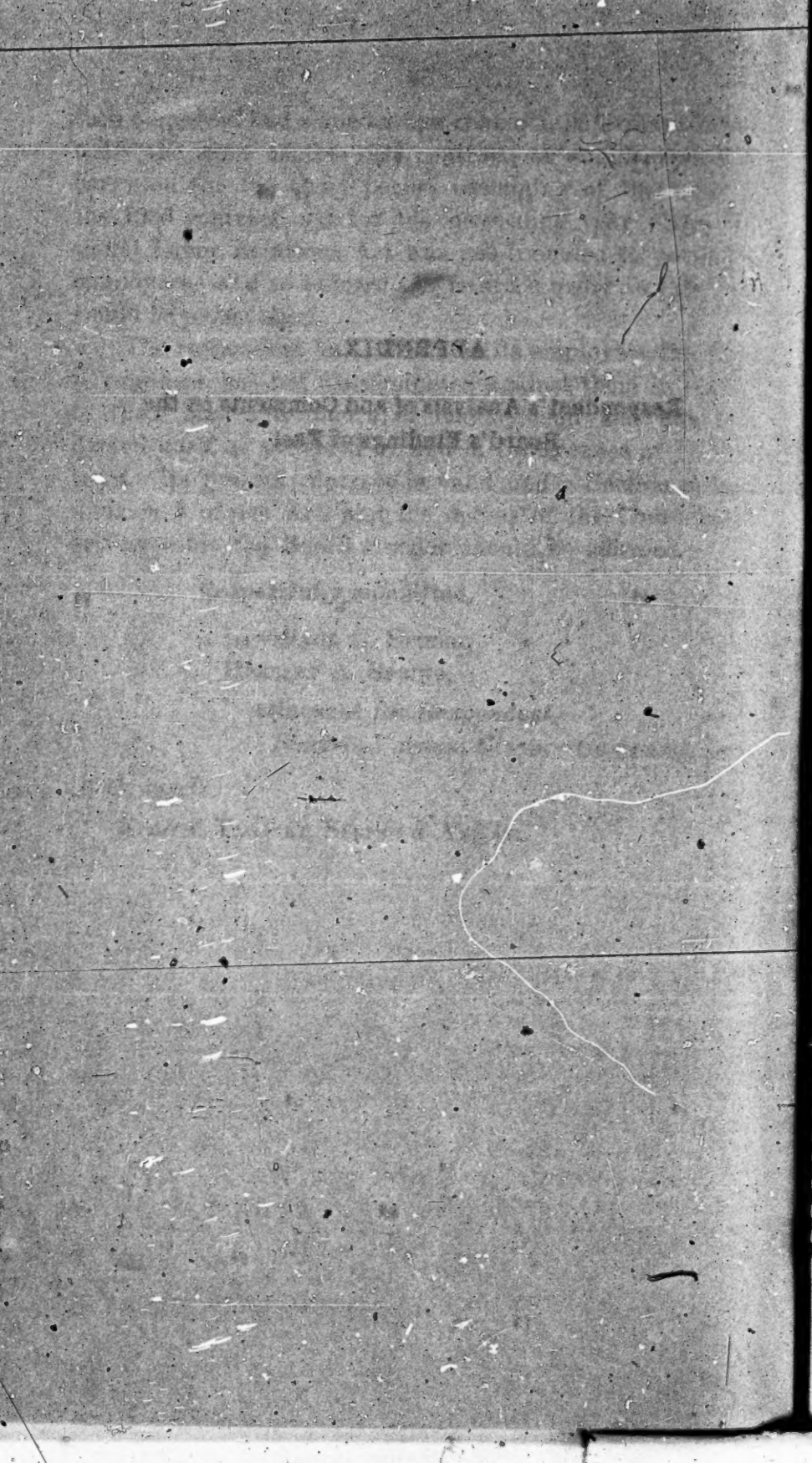
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APPENDIX.

Respondent's Analysis of and Comments on the Board's Findings of Fact.



APPENDIX.

BOARD'S FINDINGS OF FACT.	RESPONDENT'S ANALYSIS AND COMMENTS
siness of Respondent. Tr. 156)	Admitted and not disputed.
rganizations Involved. Tr. 156-7)	Admitted and not disputed.
The unfair labor practices. ence, coercion, and restraint. respondent's labor relations March, 1937. Tr. 157-8-9-160)	The first four pages relate to matters prior to the first contract and have no relation to or bearing upon the case, there being no charge as to what occurred prior to June, 1935.
60) On June 22, 1935, immeafter membership cards for he then approximately 799 es were presented to the re and checked, the respondthe A. F. of L. Affiliates en- o a written contract for 1 hich provided for seniority, r day and a 40-hour week. t reopened on the following and the employees returned	The cards presented were in form of A. F. of L.'s Exhibit No. 2 **(Tr. 865)** and indicated the signer's membership in a craft union affiliated with A. F. of L., and authorized signer's union to represent him as his bargaining agent for one year. All respondent's employees, except one hundred ninety-one, at that time, were members of A. F. of L. Affiliates. **(Tr. 160.)**
course of the negotiations respondent, the A. F. of L. demanded a completely op agreement. The respondthe position that it would ir to its employees many of d been working there for require them to join an or-, but made the counter pro- all employees hired thereuld be required after a oation period of 2 weeks to embers of the appropriate . union. The counter pro- accepted but was not incorto the written agreement.	Wilson, vice-president of respondent, testified **(Tr. 263-4-5-291)** without contradiction, that the oral agreement was as is plead in respondent's answer **(Tr. 37)**, i.e. that any employee *not then* a member of a union would *not* be required to join, but would be permitted to continue his job without discrimination. New employees, however, would have to join A. F. of L. after two weeks employment. See also testimony of Paulus **(Tr. 688)**; Gordon **(Tr. 750-1)** and Muehlhoffer **(Tr. 811-12)**. The court below also found the contract to be as respondent claims. **(Tr. 868.)** At this time there were only 191 employees in this exempt class.

(Tr. 161) On July 6, 1936, the written agreement was renewed with one minor change in its provisions, to be effective as of June 24, 1936, and to run until June 23, 1937. The A. F. of L. Affiliates, who were again required to prove their majority, presented membership cards of 771 of the approximately 809 employees. Comparison of the July 1936 pay roll with the June 1935 pay roll shows that approximately 709 of those who had been employed June 22, 1935 (whom we will refer to as the old employees) were still employed, and that the other approximately 100 persons had been hired subsequent to June 22, 1935.

In negotiating the 1936 contract, the A. F. of L. Affiliates, whose membership now included all but approximately 38 of the respondent's employees, renewed their demand for a closed-shop contract but accepted instead an oral renewal of the previous agreement relating to new employees.

It is contended by the respondent that the oral agreements were not limited in their application to persons hired subsequently (whom we will refer to as the new employees). It is claimed that under the oral agreements, old employees who were members of the A. F. of L. Affiliates at the time they were entered into were required to remain members in good standing and that other old employees, though under no obligation to join the A. F. of L. Affiliates, were required upon becoming members to maintain such membership. It is further contended that the employees were notified of the terms of the oral agreements. We find none of these contentions sustained by the evidence. We are satisfied that the oral agreements related only to new em-

On this date there were only 38 employees out of a total of 809 who were not members of A. F. of L. Affiliates. **(Tr. 161.)**

On the Board's pay roll check showing 709 old employees and 100 new, that still does not change the fact that there were then only 38 employees who were not members of A. F. of L. Affiliates, as against 191 for the year previous, the exempt class being reduced accordingly.

The oral agreement was not limited to new employees, but applied also to old employees who were members of the union in June of 1935.

Any contention other than that made by respondent would be contrary to the evidence in that it clearly appears from the record that respondent's only objection to a closed shop was its unwillingness to force old employees, not then members of a union, to join a union. In 1935 there were only 191 out of 799 employees who were not A. F. of L., and in 1936 only 38 out of 809. Respondent demanded proof of membership and for the Board to find that respondent's contract did not contemplate an employee, once having joined a union continuing his union affiliation, especially after having demanded proof thereof and in the face of the year's power of attorney given to A. F. of L. by its members, is unwarranted even as an inference.

ployees, and that the employees were never notified of their existence.

Muehlhoffer and Ralph Gordon, business agents of the Machinists Union, the only representatives of the A. F. of L. Affiliates who testified to the 1935 negotiations, merely stated that a demand was made for a completely closed-shop contract, that it was rejected, that a proposal was then **(Tr. 162)** made that new employees be required to become members and that an agreement was reached upon the basis. Paulus, the respondent's superintendent, who stated that he was familiar with the June 1935 contract, testified that there was no requirement as to old employees, and, that the agreement simply was that "the new people coming in were to join the union."

On June 12, 1936, approximately a week before the expiration of the 1935 contract, the respondent's president, Julius Tuteur, wrote to the Director of the Board's Regional Office at Cleveland, with whom the respondent had had some conversations. The letter after reciting that respondent was operating under the 1935 contract and that a copy thereof was in the Director's possession, added, apparently thereby disclosing for the first time to the Director the existence of any further agreement, "We further wish to advise you, in confidence, that we said at the time we signed the written agreement with these unions, orally, that each new employee would be required to become a member of the A. F. of L. unions within 2 weeks after date of employment."

As to employees being notified of the oral agreement, this will be answered later.

See Muehlhoffer testimony. **(Tr. 811.)** Excepts only old employees not then members of A. F. of L.

See Gordon's testimony to the same effect. **(Tr. 750-1.)**

Both Muehlhoffer and Gordon testified not as the findings claim but that the old employees not members in 1935 were the only ones excepted from having to join A. F. of L. See also Wilson's testimony. **(Tr. 263-264-265, 291.)**

Paulus testified **(Tr. 688)** there was no requirement that employees in June 1935 had to join. A fair reading of his testimony does not say that having joined they were not required to remain members.

The Tuteur letter **(Tr. 741)** was offered to support the claim that an oral agreement existed. This letter was sent to the Regional Director at Cleveland at his request, and at a time during which there was no labor trouble. The second contract had not then been made. The Regional Director was not considering at that time any case against respondent, and the purpose for which he asked this information was not known to respondent. Respondent, however, not desiring that its contract with employees be given to the general public or communicated to others in the same industry, furnished the information in confidence, and this letter is not therefore subject to the inferences which the Board makes in Note 8 to its findings and in its brief, namely, that because

R. B. Wilson, who signed both the 1935 and 1936 contracts on behalf of the respondent testified with respect to the oral agreement that "from the time of our first entering into an agreement with the American Federation of Labor, it was understood with us that every employee, coming into our shop, would be required at the end of a 2-weeks' period to either join the Federation of Labor or leave."

Muehlhoffer, the only union representative who testified as to the negotiation of the 1936 contract, stated that, "In (Tr. 163) 1936, we again entered into an agreement that, as our relationship on a verbal basis had been satisfactory, we were willing to continue with the verbal agreement, or part of it, but it was insisted again that some of the employees in that plant must come into our organization." R. B. Wilson, however, testified that the oral agreement of 1935 was merely renewed in 1936 and that prior to 1937 the respondent did not know whether new employees had joined the A. F. of L. Affiliates.

That the oral agreements did not relate to old employees is further shown by the experience of Harold A. Keehl, one of the old employees who joined one of the A. F. of L. Affiliates in the early part of 1936. Later in the year, when he had fallen behind in his dues for 6 months, Keehl was called to the plant office where he was asked by R. W. Waterbury, respondent's accountant, why he had not paid his dues. Keehl answered that he was short of funds, and asked point-blank, "Do I have to belong to the Union as long as it is not a closed shop?" Waterbury, who though the respondent's accountant, actively handled the respondent's

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remain in unions were those who i
1935 or thereafter did not join will
ingly. (Tr. 811.)

See previous comments and refer
ences to testimony of Wilson, Gordo
and Muehlhoffer.

The Board here gives but a part o
the testimony of Muehlhoffer an
Wilson. Compare (Tr. 263-4-5 an
811-12).

No proof in the record that Wate
bury actively handled respondent
labor relations with Wilson an

abor relations along with R. B. Wilon and George R. Paulus, general uperintendent, answered, "Well, I lon't want to discuss that. We have n agreement and the only thing I an tell you, the best thing to do is o pay your dues." Waterbury did ot deny the conversation. Had here been any agreement that old mployees remain members in good tanding in the A. F. of L. Affiliates, t is reasonable to believe that Keehl ould have been told of its existence n this occasion.

The respondent in its brief subitted after the hearing places conderable reliance upon the testimony f R. B. Wilson that it was anounced on the reopening of the lant in 1935, and that employees ere thereafter notified by a notice sted on the bulletin board, that ey "would be considered as workg against the interests of the comany and as such subject to disarge" if they "did anything to sturb the peaceful and friendly retionship" between the respondent d the A. F. of L. Affiliates with hom it **(Tr. 164)** had just conacted. Irrespective of what the reondent might then or thereafter ve deemed "to disturb the peacele and friendly relationship" the reat did not bring the old emoyees within the terms of the oral reement. It did not even give noe to new employees of the existce of any agreement which reired that they become members of e A. F. of L. Affiliates.

To establish that employees were tified of the oral agreement, 11 neral employees were called as witsses by the intervenors. Harry nner, the only new employee ong the 11, testified, however, Paulus other than that he was present on some occasions when the men were talked to. Furthermore his answer was consistent, since Keehl being an old employee who was a union member, was expected to maintain his standing as such.

See Wilson's testimony **(Tr. 263-4-5 and 291)** and John Frame. **(Tr. 789.)**

The Board's witness, Lowrance **(Tr. 544)**, testified as to the announcement Wilson made to shop committee and others about new employees having to join and old employees not. Remember, however, at that time there were only 191 employees who were not members of A. F. of L.

Paulus **(Tr. 688)** testified his foremen were instructed to advise new men they were required to join the union, and at **(Tr. 700)** he corroborates Lowrance's testimony as to Wilson's announcement to the shop committees.

The court below found notice had been given and that such notice included the provision that any employees disturbing the contract relation with A. F. of L. were subject to discharge. **(Tr. 868.)**

Denner was a member of an A. F. of L. union before first contract and so testified. **(Tr. 796-7.)**

that though he was hired about July 11, 1935, nothing was ever said to him about any requirement that he join a union, and he did not become a member of the A. F. of L. Affiliates until April 1937.

Matt Denmore who had been president of M. E. S. A. local, testified he "knew" when he joined Machinists Union in August 15, 1935, that "new" men "were supposed to be in the union." M. C. Parks, who had been an active member of the M. E. S. A. shop committee, and who also joined the Machinists Union in August 1935, merely testified that there was such a "general understanding in the shop." Leonard Trask, who testified that he had participated in the 1935 negotiations, discredited himself by testifying that it was a closed-shop agreement whereby "all the employees in the plant . . . were to be members" and that it was so understood among the employees, and he also contradicted other old employees by stating that there were "no discussions" of the agreement. The testimony of the other seven old employees was substantially the same; none of them indicated a source of knowledge other than general plant gossip and rumors; two of them, W. E. Wilson, a polisher, and John Fox, an assistant foreman in the polishing department, "heard" or "understood" that the oral agreement required all employees to be members of the A. F. of L. Affiliates, though W. E. Wilson later modified his testimony to give an equally imaginative version of the agreement; that it was a closed-shop contract as to polishers but required only new employees in other jobs to become members of the A. F. of L. Affiliates.

See **(Tr. 799-800)**, optional as to old employees having to join.

Parks' testimony. **(Tr. 803.)** He was an old employee, knew joining was optional, but joined.

Trask on cross examination **(Tr. 783)** stated no employees were discharged for not being members of union—referred to old employees.

W. E. Wilson's testimony **(Tr. 786)** and John Fox's testimony **(Tr. 779)** should not be judged by quoted excerpts.

W. G. Wilson, John Frame, Hugh Dougherty, Henry Huffman and James Dobert were the other men making the eleven referred to by the Board. They knew that the contract applied to new employees and that old employees not members of the union did not have to join. **(Tr. 787; 789; 792; 794; 798.)**

(Tr. 165) Notice to employees of e terms of the oral agreement was ught also to be shown by the testi- ony of R. B. Wilson, Paulus, and rdon.

Wilson testified that each foreman d his own hiring and advised new nployees at the time of employment at they "would have to join the nerican Federation of Labor within weeks or would be discharged." aulus testified that in 1935 he in- ructed each foreman "to tell every an when he employed him, that he as required to join the Union with- 3 weeks from the time he started" d that he checked up on his fore- en "at almost regular intervals, king if they had followed those in- ructions." Gordon testified that in 35 it was "the understanding that remen would so advise new em- oyees." In 1937 Gordon again took arge of the affairs of the Machin- s Union at the respondent's plant. ecording to him, he did so in order bring to the respondent's atten- n the failure of recently hired em- oyees to become members of the achinists Union; secured permis- n for one representative of the achinists Union to talk to the men the plant; and had Toth, another siness representative of the Ma- inists Union, go through the plant th the shop committee for that pur- se. Gordon testified that on this asion the new men "doubted the tom" and "were called into the pondent's office with all the em- oyees so there could be a verifica- n of the established precedent," d that, when the new employees vertheless denied knowledge of the l agreement, they were contra- ted by the foremen.

See references on page 51, *supra*, and page 54, *infra*.

Unions at all times had permission to enter plant at any time. This was true from date of first contract in June 1935. **(Tr. 265.)**

We are satisfied, from the evidence introduced by the respondent and intervenors themselves, that prior to 1937 new employees were not notified of the oral agreement. The testimony that the foremen notified the new men of the agreement, or that they were instructed to do so cannot be reconciled with the fact that, as late as June 12, 1936, the respondent expressly stated in a letter that it wished the **(Tr. 166)** existence of the agreement to be kept secret. We are unable to accept Gordon's explanation of his version of why the new employees were called to the office or what then transpired. He testified that "the agreement was explained to them and invariably the fellows would say: 'Well, we are sorry we didn't know anything about it' "—yet when he was asked whether he was present, Gordon answered "I believe I was, yes." We also are unable to believe his statement that although the foremen had advised new employees, when they were hired, that the respondent had an agreement with the A. F. of L. Affiliates which required them to become members within 2 weeks, that although such notice was repeated by the business representative of the Machinists Union in the presence of a shop committee, workers remained so incredulous that it was necessary that there be a further "verification of the established custom," by confrontation by other employees and by foremen.

Finally, if the new employees had been notified of the oral agreement, it is not reasonable to expect that some of them would have been called as witnesses or that the foremen alleged to have notified them would have been called. Neither were called,

This conclusion is wholly an arbi
trary one and contrary to the evi
dence as referred to above. Notic
to employees of the oral contrac
and its terms is clearly shown b
previous transcript references, bu
we repeat again, see testimony o
Wilson **(Tr. 263-4-5, 290-1)**, Low
rance **(Tr. 544)**, Paulus **(Tr. 68
700)**, Gordon **(Tr. 750)**, W. E. Wi
son **(Tr. 785)**, W. G. Wilson **(T
787)**, John Frame **(Tr. 789)**, Hug
Dougherty **(Tr. 792)**, Henry Huf
man **(Tr. 794)**, James Dobert **(T
798)** and Muehlhoffer **(Tr. 811)**.

As to this letter see page 49, *supra*

As appears from above transcri
references the shop committees we
notified by respondent it was reall
duty of union to give notice a
their agents had access to the pla
at all times. However respondent
also had its foremen instruct ne
employees.

Referring to Board's note at bo
tom of **(Tr. 166)**, we know that
June 1936 there were 771 union me
bers who had signed cards givi
authority to A. F. of L. for one ye
to represent them as employees a
being union members, this likewi

though five new employees called witnesses by the Board had testid that they had not been given tice of the agreement.

) Interference, coercion, and restraint in March, April and May, 1937.

In March, 1937, employees workg in the machine shop were called to the respondent's office where ey were spoken to by Julius Tuur, R. B. Wilson, Paulus, Waterry, and the officials of the A. F. L.

(Tr. 167) We have referred to Gorn's testimony that new and old emyees were called into the office so t the new employees who denied owledge of the oral agreement ght be confronted by their foren, and so that the agreement ght be "explained" to all emyees. Toth, who according to Gorn rounded up the employees, did mention the alleged confrontans; nor for that matter did anyone e. Toth testified that, on these asions, Paulus merely told the ployees that the company had an reement whereby the new emyees were required to join the chinists Union but explained that employees need not. Moreover h admitted that he did not know ether the men to whom Paulus ke were new or old employees, that on one occasion, when seven were called in nothing was ed at the conference to indicate t there was a difference between and new employees.

Waterbury testified that old emyees were summoned to the office be sure they understood exactly contract." Like Toth, he ven-ed no explanation as to why this

meant as union members for that period.

Julius Tuteur did not attend the meeting. He merely happened to pass by the room and dropped in for a moment. **(Tr. 514.)**

No one denied the confrontations.

Paulus testified Machinists' Union was trying to get new men to join and asked his help. He called upon old employees to help him. **(Tr. 689.)** Reasonable to do this since practically all old employees must have then been members. Only 38 not members in June 1936.

Why was any explanation needed?

was thought necessary or desirable, was uncertain whether any new employees were called in, and professed to be unable to remember whether any of the employees signed union cards in the office.

Paulus testified that the groups called in were from the machine shop, and that they "were old men who had been there a long time, men I felt I knew very well." He stated that they were called in because the officials of the Machinists Union had asked for his "assistance" in signing up new employees. According to Paulus, he, Waterbury and Toth explained the contract to the old employees and asked them to aid in getting the new employees to join the Machinists Union. Paulus did not testify that any new employees were called to the office, admitted that on one vists to the office five of the employees signed cards, and also admitted that Edward Ramsey, an old employee, was discharged when he refused to sign. On that occasion, Paulus testified, there were present with him not only Toth and Gordon, business agents of the Machinists Union, but also Muehlhoffer, business agent of the Polishers Union, **(Tr. 168)** and Lenahan, Secretary of the Cleveland Federation of Labor, and that it was Lenahan who asked that Ramsey be discharged.

R. B. Wilson, who also admitted that Ramsey was discharged because of his refusal to join the Machinists Union, recalled that McKinnon, general organizer for the A. F. of L., was also present at the time. Wilson did not purport to explain why the men were called to the office, except to say that he warned them that "any employee of ours who did anything to disturb the friendly relation-

Paulus testimony. **(Tr. 689.)**

Ramsey was the only case in t whole record of any man bei threatened with discharge, or d charged for refusing to join A. F. L. Not a single witness testifi that anyone other than Ramsey w threatened with discharge for ref ing to join A. F. of L., and Rams was immediately reemployed and h been with respondent ever since th time.

No dispute about men being call to office to discuss joining unio Why would any explanation to th effect be required of Wilson? So t

lip existing between our company nd the American Federation of Labor would be considered as oper- ting against the best interests and ubject to dismissal." What this arning was intended to mean to mployees and what it undoubtedly onveyed to them is to be gathered rom a consideration of what was appening in the machine shop eanwhile.

Wilson admitted that about this ime Muehlhoffer, business agent of he Polishers Union, and Newman nd Rhinehart, members of the pol- hers committee, advised him "there as some agitation in the machine op," that he told them that they ere "unduly alarmed" and that e would proceed to investigate the atter." Calling the employees to e office was obviously Wilson's idea an investigation. And the im- rt of the conferences that followed evident when it is noted that "the itation in the machine shop" was then an organized movement ong the employees to sign up mbers for United. Although al- edly about a hundred new em- yees had been hired in the ma- ne shop since July, 1936, and not ed the A. F. of L. Affiliates, that iously was not the cause of oc- rences of March, 1937. Indeed, don's testimony that the Machin- Union sought out the manage- t at this time to obtain permis- to solicit new members at their k was transparently untrue in of the fact that the A. F. of L. iates had had that privilege 1935. **(Tr. 169.)** What was at was the possible defection of mployees to United. Otherwise, xample, there is no way to ac- t for the admitted presence of as his warning was concerned, this had been published on buletin board and men were told nothing new. **(Tr. 291 and 685.)**

(Tr. 682.) No employees, as a result of Wilson's investigation, were threatened with discharge.

This inference is wholly unjustified and contrary to the evidence. Calling men in was Gordon's suggestion and Wilson had nothing to do with it. (Tr. 682, 689.)

The testimony as given in the findings is not correct. The 100 new employees were in the plant and not in the machine shop. **(Tr. 752.)** Gordon wanted to put three men in to organize and this the respondent would not agree to. He didn't seek permission to merely solicit members as the findings claim.

Clearly shows whole trouble was raid by C. I. O. on A. F. of L. plant.

Muehlhoffer, business agent of the Polishers Union, Lenahan, Secretary of the Cleveland Federation of Labor, and McKinnon, general organizer of the A. F. of L., in the office when employees from the machine shop were called in, and Lenahan's admitted role on those occasions.

This fear of United first manifested itself in the treatment of Edward Rericha, several days before the first group of employees were called to the office. Rericha, a member of the Polishers Union, had been employed by the respondent as a polisher for 11 years. On several occasions prior to March 11, he discussed the C. I. O. with other men in the plant and suggested that if they "would all belong together" (obviously referring to their belonging to one union rather than the several A. F. of L. organizations), "we would get better results." When Rericha came to work on March 11, he found his time card withdrawn and when he asked the reason was referred to Rhinehart, of the polishers committee, who sent him to Muehlhoffer. When he went to the Union's office he was accused of talking against the union and of being a member of the C. I. O. for the past 2 months. It appears that he was formally tried for delinquency in dues but, because of the protests of his fellow polishers, those charges, too, were dropped and he was told to return to work March 22.

About March 15 Theodore Vitosky, employed in the machine shop, objected to Toth's efforts to sign up a new employee who had not been promised a steady job, remarking, "It looks like a racket." Toth answered he "didn't have to take that" and obtained Vitosky's name from

This testimony was offered
objection, and is not competent.
625.) Rericha was suspended by
A. F. of L. union during week of
down.

Again shows trouble was due
tirely to C. I. O. attempting to
ganize A. F. of L. plant.

We call to the Court's atten
the fact that Vitosky's testim
(Tr. 304-309) was mostly admi
over respondent's objection to wh
exception was taken.

Vitosky had been a membe
A. F. of L. in 1935. He was
threatened with discharge w

he timekeper. The next day Vitosky and four other employees were ent to the office by Sam Wagner, eneral foreman of the machine shop. Of the five employees, Vitosky and t least one other, Elmer Lejinsky, ere old employees. In the office y found Paulus, Waterbury, (Tr. 70) Toth and some other persons hom Vitosky did not recognize. Before they left the office, Vitosky nd his companions had all signed nion cards. As we have pointed out he respondent offered no explanaion for this. We accept Vitosky's estimony that they signed because aulus asked them to and refused o allow them time to consider the atter.

On March 16 Paulus was seen in he machine shop, stopping at machine after machine, and signalling he representatives of the Machinists nion to come over. When Edward outnik, employed in that departent, came to work at 11 o'clock hat morning, several hours after the hift began, he found the shop in conusion and was approached by a numer of employees who told him that he "A. F. of L. organizers are down ere and they are trying to make verybody sign up." Later in the ay, Koutnik and Howard Lowrance, welder in the polishing department ho was a member of the United, greed that Lowrance would arrange r a meeting with a representative United and Koutnik would pass round word of the meeting. The xt afternoon, after work, Scott, a nited organizer, met with about 60 mployees. They signed cards and eceived others which they took into plant the next morning and beun to sign up other employees.

asked to resign a card, nor were the others with him, even though the requests were made on several occasions. (Tr. 316.)

Vitosky knew, and so testified, that new employees had to join after a probationary period of three weeks (Tr. 317), so that Toth's solicitation on Vitosky's own testimony was proper and according to contract.

This is not the testimony. See (Tr. 378-9), Koutnik says he saw Paulus go to a man working and motion to an organizer to come over. Testimony indefinite and part of it given over objection by respondent.

On the morning of March 17, Clyde H. Boyes, a sub-foreman, and himself an old employee, was sent to the office, together with six old employees in the automatic department of the machine shop. Boyes testified that McKinnon (general organizer for the A. F. of L.) and Toth, in the presence of Paulus, Julius Tuteur and four or five others whom he did not recognize tried to get them to sign cards but that after a dispute over initiation fees **(Tr. 171)** they returned to work without signing. About 2 o'clock that afternoon Boyes and some of the automatic men were recalled to the office. This time, Paulus said he thought they were intelligent men who would want to hold their jobs and could use their influence on the other employees. Boyes testified that Waterbury then told them "they wanted an answer soon" because the Polishers Union had threatened to strike if the employees in the machine shop did not sign up, and added that this would result in their being "out on the street." Waterbury denied making such a statement but neither he nor anyone else denied that this was the second time in one day that these employees had been called to the office. Nor was there any denial of Boyes' testimony that he and some of the same men were called in again on March 18. No one can believe that they were summoned the second and third time for the purpose of being informed as to the existence of the oral agreement. We find Boyes' testimony as to this and the previous visits convincing. On the third occasion Paulus, Wilson, Waterbury, Lenahan, McKinnon and several others were present. Lenahan asked the automatic men to sign a card and when

Boyes was not called to any meeting at which Julius Tuteur, respondent's president, was present. The testimony is that Mr. Tuteur happened to pass Paulus' office and dropped in for a moment. His only participation, after being told what the argument was about, was that he wanted the employees treated right. **(Tr. 514.)** We commend to the Court a reading of Boyes' testimony. **(Tr. 515, et seq.)**

See Waterbury testimony. **(Tr. 703-4.)**

Respondent does not claim that employees were called to the office merely to inform them about the oral agreement. Some employees were called in for this purpose, but in many instances, it was to discuss the securing of members for A. F. of L. from among new employees. **(Tr. 689.)**

No one was threatened or discharged **(Tr. 524)**, and for a rea

y walked out again without com-
ing Lenahan told Wilson "they
uld be discharged."

Waterbury's warning on the after-
n of March 17 of a strike by the
ishers Union followed only a few
rs after Muehlhoffer had pro-
ed a strike to the polish[illegible]s com-
tee because the men in the ma-
ne shop were "joining C. I. O."
rse, one of the committee, testi-
that when no decision was
hed Muehlhoffer took Rhinehart,
other two members of the com-
tee, to the office; that on their re-
n Newman, who was chairman of
committee, reported that they
proposed a strike to Wilson, but
the latter had said "it was not
essary, that it was nothing serious
ut it, but he was going to make
n join the American Federation
abor Union, and if they don't he
ld fire one or two so the rest of
n will join." Though hearsay,
testimony as to the threat being
le to Wilson is satisfactorily cor-
rated by Boyes' testimony as to
erbury's warning. **(Tr. 172.)**
son, we have noted, admitted the
by Muehlhoffer and the commit-
He denied, however, that a
ke was threatened or that he had
e the statement imputed to him.
denial is not persuasive. He ad-
ed warning those called to the
e that if they "did anything to
rb the friendly relationship
the A. F. of L. Affiliates they
uld be subject to dismissal," he
no explanation of why, after
visit by Muehlhoffer and the
nittee, Boyes and the other auto-
e men were twice recalled to the
, and he admitted that on March

understanding of what occurred at the several meetings of Boyes', and to show that nothing was done which was contrary to the contract, we refer the Court to **(Tr. 512-519).**

Waterbury denied this warning. **(Tr. 701-2.)** Board admits this denial above, but conveniently forgets it here.

The Board called neither Newman nor Rhinehart, the men Behrse claimed to be quoting.

This testimony, the Board, in its findings, admits to be hearsay, and it was objected to as such, and admitted by the examiner over the respondent's objection. **(Tr. 563-4-5.)**

Waterbury, however, as shown above denied this warning.

There is a specific denial by Wilson. **(Tr. 682.)** That this denial is not persuasive, as the Board claims, is contrary to the facts, and a fair reading of the transcript, and such a finding by the Board, shows a bias, as Wilson was never discredited as a witness. **(Tr. 681-5.)**

18 Ramsey was discharged for refusing to sign a card in the office.

Edward Ramsey, together with "Vargo" or "Lefty Fargo," Kiss and "a fellow from the Automatic room" (who seems to have been Louis Young) were sent to the office by Sam Wagner, the general foreman, about 2 o'clock in the afternoon of March 18. Ramsey, Vargo and Kiss were old employees (as was Young). In the office Lenahan acted as spokesman for a group which included Waterbury, Toth, Paulus, Gordon and Muehlhoffer. Ramsey testified that Lenahan said the A. F. of L. "had a contract with the firm and the boys would have to sign up," that all but Ramsey signed and returned to work; that Ramsey persisted in refusing to sign; that Lenahan then told him he was fired, whereupon, Ramsey went back to the machine shop. No one denied Ramsey's testimony as to what happened to him personally; on the contrary, both Wilson and Paulus admitted that this was what happened. Nor was there any direct denial made of Ramsey's testimony so far as it related to Vargo, Kiss, and the "fellow from the automatic room." We see no reason to doubt that portion of Ramsey's testimony and find the facts to be as stated by him. We are further impressed by the failure of the respondent or intervenor to call as a witness, as to **(Tr. 173)** what happened in the office, a single fellow employee named by Vitosky, Boyes and Ramsey, or for that matter, any other employee, old or new.

As we have pointed out Ramsey was told in the respondent's office by Lenahan in the presence of Paulus, the respondent's superintendent, that he was "fired." Lenahan also ordered him to "step out into the

We ask the Court to read the testimony of Ramsey, Paulus and Wilson as to what occurred and not to be influenced by the argument in the Board's findings, for it is an argument and not a statement of the facts. **(Tr. 524 et seq.-691-267.)**

It is true Ramsey was discharged, but respondent attempted to rectify the mistake promptly, but was prevented by Ramsey's refusal to return to the office and by the sit-down strike which had then occurred. **(Tr. 691.)**

Despite Ramsey's discharge, he was never out of work, is not an employee for whom any claim is here made for back pay, and is still working for respondent and the court below so held. **(Tr. 873.)**

er room." This Ramsey did, ted a few minutes in the next m—watching the other men sign and then returned to his depart- nt. Under the circumstances, the nce of Paulus, who was in charge iring and discharge, was reason- regarded by Ramsey as indicat- that Lenahan acted with the ac- escence and approval of the re- ndent. Nor may the incident be shed aside, as suggested by the F. of L. Affiliates at the oral ar- ent before the Board, on the nd that while Lenahan "had no t" to tell Ramsey that he was harged, Lenahan "was pulling a timate bluff." The record leaves doubt that Lenahan's purported rcise of authority on behalf of the ondent was coercive because it understood by Ramsey to be, the respondent knew it would be erstood to be, the action of the ondent. Moreover, it is unnec- ry to determine whether under ciples of agency Ramsey's dis- ge was effected instanter upon han's declaration. The conten- of the respondent that "it fairly ears that no one was discharged," t, in any event, supported by the rd. Paulus admitted that he sent Wagner, Ramsey's foreman, and him that Ramsey "was fired." her, Wilson flatly testified that sey was discharged by his fore- as the result of the request of A. F. of L.

e further contention is made the respondent, shortly after he the office, realized that Ramsey n old employee and should not, fore, have been discharged; that is at once sent for Ramsey to y him that he had not been dis- ed; but that Ramsey "refused

As a matter of fact, when Paulus told all employees, when the sit-down strike occurred "to go home and come back in the morning," that in itself was enough to revoke the so-called discharge. **(Tr. 692.)**

See Paulus testimony. **(Tr. 691.)**

to return to the office to be given 'his word." Meanwhile, the men in the machine shop on hearing of Ramsey's discharge sat down, Ramsey joining in the sit-down. According to the respondent Ramsey's refusal to **(Tr. 174)** return to the office is to be explained on the ground he was "excited and (not) interested enough to return to the office," and that the men in the machine shop persisted in the sit-down after Paulus had told them to go home and return in the morning, simply because they "had made up their minds to sit and this they proceeded to do arbitrarily, without justification and in violation of their agreement." The A. F. of L. Affiliates advance another explanation for Ramsey's refusal to return to the office, it being their contention that the strike had no relation to Ramsey's discharge, but was a deliberate step in the organizational campaign of the United. At the oral argument, the respondent and the A. F. of L. Affiliates, for the first time, advanced the further contention that the strikers committed acts of violence and wantonly destroyed the respondent's property. The respondent and the A. F. of L. Affiliates rely upon the facts thus asserted to explain and justify the conduct of the respondent following the termination of the sit-down on March 19. Further, the claim that the discharge of Ramsey was the result of an error and was sought to be corrected immediately, is urged to support the contention that the respondent had engaged in no unfair labor practices prior to the strike. We shall review the course of events immediately preceding the strike, and then consider the further contentions with respect to the cause of the strike and its conduct.

Most men didn't know why they struck. Vitosky. **(Tr. 318.)**

Respondent does not now, and never has made any claim by reason of any violence occurring during the strike. On its theory of this case, it is immaterial.

(Tr. 174, 175 and 176) Quotation
m respondent's brief filed before
trial examiner.

The three pages of the finding devoted to a quotation from respondent's brief before the trial examiner has no place in the finding.

(Tr. 176) It is to be noted that
ılus did not testify that he decided
recall Ramsey to the office because
ıad been discovered that Ramsey
s an old employee and, therefore,
. 177) not properly discharged.
reover, Paulus did not testify that
instructed Wagner to advise Ram-
that the reason for his recall to
office was to withdraw the dis-
rge. Indeed, it is apparent that
lus' testimony that it had been
ided to withdraw the discharge is
to be credited in view of his ad-
sion that, during his subsequent
t to the machine shop, he made no
ement either to Ramsey or the
r strikers that the discharge had
ı reconsidered.

It is rather unfair to try to discredit a witness as honest as Paulus is shown to be when he testified he did not remember patting Ramsey on the back and telling him to forget the discharge (Tr. 692) after Koutnik, one of the Board's witnesses, had testified to hearing Paulus make such a remark to Ramsey. (Tr. 385.)

he record clearly discloses that
ısey's discharge was not the re-
of any mistake. Not only is
e no evidence that it was, but it
matively appears that it was not.
ısey was not an employee on the
ler-line between old and new em-
ees. He had been in the respond-
s employ for over 7 years. It is
nceivable that Paulus and
erbury thought he was a new
loyee. Moreover, it clearly ap-
s from Paulus' testimony that he
under no misapprehension. He
itted that the men called in from
machine shop "were old men
had been there a long time, men
iew very well." Furthermore,
sky, who on March 16 had been
)elled to sign a card in the pres-
of Paulus and Waterbury, had
in the respondent's employ for
st 9 years; and Boyes, a sub-

Vitosky was a member of A. F. of L. (Tr. 316) as was Boyes (Tr. 513).

foreman who three times on March 17 and 18 had been solicited in the presence of Paulus and Waterbury to sign a card, and on the last occasion, shortly before Ramsey's discharge, had been threatened by Lenahan with discharge, had been in the respondent's employ for 12 years. It is patent that Ramsey was not recalled because of any discovery that he was an old employee but because his discharge had been immediately followed by a strike.

The record is clear, and we find, that beginning on March 16, the respondent set out to forestall the organization of its employees by the United, and to compel them to sign up in the A. F. of L. Affiliates. As we have pointed out above, prior to March 1936 employees were not advised of the existence of the oral agreement. The record fails to show the name of a single new employee among the persons called into the office on March 16, 17 and 18, **(Tr. 178)** and the circumstances set forth above lead us to conclude that the new employees were not called in, and quite understandably so. The concern of the respondent was not over the failure of some new employees to join the A. F. of L. Affiliates, but with the possibility of dissatisfaction by the approximately 630 old employees who constituted more than two-thirds of the 932 persons on the payroll, and none of whom were covered by the oral agreement and whose affiliation with the United would not only constitute that organization the representative of a majority of the employees but obviously would have swung, or at least have been most likely to turn, the new employees to the United. Faced with this situation the re-

Repetition and answered by comments above.

The same is true as to notice of the oral agreement.

Respondent did not suggest calling men in for conference—this was the union's idea. **(Tr. 689.)**

There is no evidence that respondent was concerned as Board infers. There were then outstanding powers of attorney from all but 38 men.

The record showing (except as to Ramsey) no threat of loss of employment for failure to join a union, does

spondent summoned the old employees to the office and there sought to, and in many instances was able to, coerce them into joining the A. F. of L. Affiliates. Its action was plainly an interference with the right guaranteed its employees by Section 7 of the Act.

Only by virtue of the proviso contained in Section 8 (3) of the Act was the respondent entitled prior to March 1937, to require new employees to join the A. F. of L. Affiliates. That right it then had because of the provisions of the agreement made in 1935, and renewed in 1936, when the A. F. of L. Affiliates represented a majority of the employees and had not been assisted by any unfair labor practice by respondent. However, the rights of old employees guaranteed by Section 7 of the Act were unaffected by the agreement. The agreement placed no limitation upon their right to become members of the United and to encourage other old employees to become members, or to decline to join, or to drop their membership in the A. F. of L. Affiliates, or to persuade other old employees to do so. Nor did the agreement inhibit old employees from urging such action upon new employees. Of course new employees who **(Tr. 179)** forsook or refused to join the A. F. of L. Affiliates after being advised of the oral agreement could be discharged pursuant thereto. But it does not follow that the respondent was entitled to interfere with the efforts of old employees to induce new employees to join the United or to change their affiliation from the A. F. of L. Affiliates. The agreement did not purport to give the respondent any such right. Moreover, the proviso does not permit imposition of

not support the Board's argument, and we ask the Court to note that the Board does not cite one single instance where an employee was threatened. Every witness asked the question disclaimed any threat.

Respondent's right to require new employees to join and old employees having joined to maintain their membership is considered in respondent's brief.

Board here concedes respondent had right to enforce oral agreement, as to new employees, although later in its findings it denies this right. If the oral agreement is as respondent contends, then it applied to old employees as well, except such as in 1935 were not members of the union and had not joined since then. There were only 38 such men.

the penalty in a case where no notice has been given of the existence of the agreement. The proviso in permitting the employer "to require membership" in a labor organization manifestly implies that the employee shall be advised that the employer's action is taken pursuant to an agreement. Otherwise employees would have no means of knowing whether they were being illegally discriminated against, or whether the employer was simply enforcing a valid obligation. The proviso was hardly intended to permit equivocal employer conduct, so likely to precipitate industrial conflict over what employees, in view of the employer's silence, quite reasonably conclude was an interference with rights guaranteed to them by Section 7 of the Act.

The respondent's conduct, manifestly illegal on March 16, 1937, did not become permissible action on March 17, because the A. F. of L. Affiliates threatened to strike unless the employees in the machine shop joined those organizations; the threat afforded no justification for the continuance of the flagrant interference with the rights of employees.

We have referred above to the contention of the respondent that the employees in the machine shop went on strike "arbitrarily" and "without justification" and to the contention of the A. F. of L. Affiliates that the strike was part of the plan of the United to organize the plant. The **(Tr. 180)** record, however, shows that the strike was the direct result of the respondent's illegal action, that it was decided upon only after the threat by Lenahan on March 18 to Boyes and the other automatic men that they "should be discharged" for refusing to join the

The Board again ignores, as it has throughout its findings, the membership cards and powers of attorney given by employees, and their effect on union affiliation.

There is no claim by respondent that any strike was threatened on March 16th. The threat was made on March 20th, after the sit-down strike was ended.

F. of L. Affiliates, and that it was ally precipitated by the discharge Ramsey. The record further es- blishes that the strike was a de- nsive measure and not an organi- tional tactic; that it was termi- ted at once upon the respondent reeing that the illegal conduct of e past few days would cease. inally, the record leaves no doubt at such violence and destruction of roperty as occurred, and there was ttle of either, is to be attributed to e A. F. of L. Affiliates.

As we have pointed out above, a roup of approximately 60 employees et with Scott, the United organizer, the afternoon of March 17, signed rds, and received others to be used soliciting members. There was no scussion of a strike, and the strike e next day was a complete sur- ise to Scott. The calling of a rike was first discussed by the men the machine shop after Boyes and e other automatic men reported e threat made by Lenahan in the esence of Paulus and Waterbury. hen Ramsey and his group were lled to the office the men in the achine shop agreed that they ould strike if any discharges fol- wed. The record is unclear only to whether the strike followed mediately after Ramsey returned om the office or whether confirma- on of the discharge through Wag- r intervened. That the strike was used by Ramsey's discharge is lain, and the contention to the con- ary is in the teeth of Wilson's ad- ission that the respondent knew it be the cause. Wilson testified that The reason was that an employee ater identified by him as Ramsey) d been discharged at quitting me, a few minutes before, and as a

This does not follow from the record, because Vitosky testified the men didn't know why they took part in the sit-down strike the 18th. **(Tr. 318.)** Even Vitosky didn't know why he did so.

demonstration about that the employees you have referred to (i.e. the employees in the machine shop) stayed over night."

The strike by the employees in the machine shop was **(Tr. 181)** not conducted as an organizational strike. No attempt was made to prevent the operation of the other departments. While employees in some of the other departments on hearing of the strike quit work, the shift ended shortly after the strike began, and employees in the other departments left the plant; the men on the next shift worked except in the machine shop. During the evening some of the strikers asked employees in the plating department to join in the strike. This led to a heated argument with Muehlhoffer, business agent of the Polishers Union, which included employees in the plating department, and Rhinehart, a member of the polishers committee. When the matter came to the attention of Koutnik, one of the leaders of the strike, Koutnik took the position that since the employees in the plating department were represented by the Polishers Union, and had been ordered to work by their representatives, the strikers should not seek to involve them in the strike; and the solicitation ceased at once. The strike remained limited to the machine shop, the employees in which were the persons who had been subjected to the respondent's illegal action. Indeed, there is no evidence that any employee in the machine shop wished to work but was prevented from doing so by the strike, although the pay rolls in evidence show that many of them were still employed by the respondent at the time of the hearing and therefore available as witnesses.

Respondent's plant is such that one department is shut down the balance of plant cannot run. (Tr. 275.) Furthermore, Keehl testified that other departments participated later in the strike. (Tr. 494.)

It is ridiculous for the Board to suggest that with half or even a part of a department engaging in a sit-down strike, the remainder could work.

he strike by the employees in the hine shop was clearly a defen- step, and the claim of the re- ndent that the men struck "arbi- rily, without justification and in ation of their agreement" is nifestly without merit. The actions the respondent which caused the ke was illegal, and was, more- r, action approved, and there can little doubt, instigated by the F. of L. Affiliates. The claim now le that the employees in the ma- ne shop had available and should e resorted to the procedure pro- d in the contract for settlement grievances by negotiations be- en the respondent and the A. F. L. Affiliates flouts common sense. Tr. 182) Whether the strike con- uted a trespass upon the respond- s property it is unnecessary to de, although we note that the re- ndent at no time ordered the men eave the plant. None of the strik- were denied reemployment by respondent because of their par- ation in the strike. Nor, as we l point out, are the respondent's ons subsequent to the termina- of the strike to be attributed eto. Apparently in an attempt stablish such a causal connection veen the strike and the respond- s actions after its termination, respondent and the A. F. of L. iates urged at the oral argument re the Board that the strike was ently conducted and involved the ton destruction of property by United. The contention has, as ave stated, no foundation in the rd. Neither the respondent nor A. F. of L. Affiliates called any esses to establish such acts on art of the strikers, nor sought to such evidence by cross exami-

It was a strike by some 60 employees who had the night before started to organize C. I. O. and some few others who signed cards the morning of the strike. **(Tr. 445.)**

Some men, as Vitosky testified above, didn't know why they struck —but the evidence is clear, regardless of the Board's finding, that the cause was to have C. I. O. organize against A. F. of L., and respondent was in the middle. *There was no dispute as to wages or other grievances.* **(Tr. 285.)**

Since no trespass is claimed, why burden the record with this purposeless argument and include it in a finding?

nation of the witnesses called by the Board. From the uncontradicted testimony it appears that the only violence occurred on the morning of March 19; that at that time McKinnon, general organizer of the A. F. of L., came into the machine shop and ordered the strikers to leave; that McKinnon immediately attempted to bring in 30 or 40 men, who obviously were not employees in the shop since the employees were already there on strike; that one of the 30 or 40 men sought smashed through the glass door with a blackjack, hardly an instrument carried by an employee; that the strikers prevented these men from entering the room; and that then the strikers were showered with bricks and other objects "from outside the factory." There is no evidence that McKinnon acted under any authority from the respondent, or that he made any such representation to the strikers. Such violence and property damage as occurred was, therefore plainly attributable to the A. F. of L. Affiliates. Indeed there is no evidence that the respondent, which had never ordered the men from the plant, deemed it necessary to invoke the protection of the police. **(Tr. 183.)** On the contrary the appeal to the police was made on behalf of the strikers.

On the morning of March 19, Scott, who had learned of the strike, went to the East Cleveland police station to invoke the assistance of Chief of Police Corlett. The latter had acted as an intermediary in 1935, and the first contract between the respondent and the A. F. of L. Affiliates had been signed in his office. Scott appealed to Corlett to intervene in the situation and at-

t to make "some kind of ar-
ement to get these men back
were discharged and a peaceful
ement." Corlett agreed to un-
ake a settlement, and later in
day advised Scott that he had
nunicated with the respondent,
suggested that Scott prepare an
ement which he would present
he respondent. An agreement
prepared, but Corlett returned
informed Scott that his proposal
not acceptable to the respond-
Scott then prepared the fol-
ng proposal:

I hereby authorize Chief of Po-
e Corlett to act with the Electric
cuum Company. We agree to
back to work with the reinstat-
g of the two men discharged
sterday, with the understanding
at the employees shall have the
ght to join any Union of their
n free will.
Under these terms we agree to
back to work peacefully.

WALTER E. SCOTT,
District Organizer.

ett returned to the plant with
revised proposal, telephoned
t who had remained at the po-
station, and informed him that
Wilson and Lenahan had
ed thereto, but that the men in
machine shop insisted upon
f that Scott had authorized the
ement. **(Tr. 184.)** At Corlett's
gestion, Scott came to the plant,
in the presence of Corlett and
lus addressed the strikers, and
ained that under the settlement
would return to work on Mon-
which was the next work day.
t made his statement about 2
ek in the afternoon, and the

We commend to the Court's read-
ing, Scott's testimony as to the
settlement he claims was arranged
by Corlett. All matters to which
he testified were hearsay, were ob-
jected to and admitted over respond-
ent's objection. **(Tr. 433-4.)** Corlett
was available. Wilson, at the time
he testified, could have had called to
his attention Scott's purported writ-
ten memorandum. Lenahan and
other witnesses were available.

The agreement was undoubtedly
as Wilson testified **(Tr. 268 and 281)**;
namely, that any discharged em-
ployees could return without preju-
dice. There was no agreement that
all employees would have the right
to join any union.

The reliance which the Board
places on this hearsay evidence, is of
course, prompted by its attempt to
sustain charges against respondent
by showing, if possible, a variation,
at this time, of respondent's con-
tract.

strikers immediately left the plant. Although the respondent urges that there is no "competent or substantial evidence to support a finding" that the respondent was a party to the settlement of the strike, or that it was adjusted with the understanding that "the employees shall have the right to join any Union of their own free will," Wilson testified as follows:

> Chief Corlett came to us from Mr. Scott and stated that if we would agree to take back two employees who had been discharged —one only had been discharged, but there were two mentioned in this particular transaction, who the second one was I don't know— if those people would be taken back without discrimination, the plant would open up, and we said that we have no objection, to refer the matter to the American Federation of Labor, who stated that they had no objection, and on that agreement the plant was evacuated.

It is apparent from Wilson's testimony that the respondent was a party to the settlement agreement, as were the A. F. of L. Affiliates. There is no suggestion in Wilson's testimony that the settlement was upon any other basis than that proposed by Scott, and reported to him by Corlett to have been concurred in by Wilson and Lenahan. Lenahan was not called as a witness. Wilson who was the first witness in the case, gave the testimony set forth above upon his first appearance on the stand. Later the testimony with respect to Corlett's reports, and the re-drafted proposal itself were added to the record. Subsequently Wilson was called as a witness by the re-

Wilson's version of the Corlet settlement is the only competent evi dence in the record in regard there to.

(Tr. 268.) The Board here co rectly quotes Wilson, and the Cou will note that his testimony is ver specific, that the right to return t work, without discrimination a plied only to one and possibly tw persons supposed, at that time, t have been discharged.

Wilson had given his version the settlement by Corlett. Why de

spondent and did not deny any part of Corlett's reports. That the reports accurately set forth the facts is fully corroborated by the circumstances above set forth, and particularly by the absence of any contradiction by Wilson or Lenahan, **(Tr. 155)** and by the fact that Corlett otherwise would hardly have requested Scott to come to the plant to reaffirm the final proposal. We find that the respondent agreed to the reinstatement of Ramsey and the resumption of work with the right of employees to join the union of their own choosing.

At the oral argument before the Board counsel for the A. F. of L. Affiliates urged that the termination of the strike was secured only because they sacrificed their rights under the oral agreement. As stated by counsel, "If the A. F. of L. had said 'No, we are going to stand on our rights and the new men must join' • • • there never would have been a termination of that sit-down." The contention rests upon mere assertion. The employees had no knowledge of the oral argument, and the conduct of the strikers indicates no disposition to disregard any rights of the A. F. of L. Affiliates in the premises. Indeed their conduct with respect to the employees in the plating department indicates the contrary. Moreover, there is no evidence that the respondent or the A. F. of L. Affiliates ever suggested that the strike be terminated under an arrangement whereby new employees would join the A. F. of L. Affiliates, and the reason for their failure to do so is explainable by the fact, to which we have adverted above, that they were concerned about the old and not the new em-

such purely hearsay testimony as Scott's! Respondent preferred to stand on its objection being sustained by the Court. *The Board here comments on Wilson's failure to deny testimony, and where he does deny it, as in the case of Boyes and Behrse, the Board finds his denial* **(Tr. 172)** *is not persuasive.* It is impossible to meet such arbitrariness on the part of the Board.

This paragraph is purely an argument and decides or finds nothing.

ployees. The contention now advanced for the first time is sheer speculation and has no support in the record. Indeed it is squarely in conflict with the equally untenable claim of the respondent that the strike settlement did not provide that employees might join the union of their own choice.

On March 20, the respondent inserted an advertisement in a newspaper tersely announcing the closing of the plant on March 22 "as a result of" a letter received from the (Tr. 186) Cleveland Federation of Labor and the A. F. of L. Affiliates. The letter, dated March 20, stated that, "As the bargaining agent for your employees we request you to temporarily close your plant, pending present negotiations with you relative to matters covered by our contract wtih you." No testimony was offered to explain the reference to "pending present negotiations"; and under the circumstances it must have been a reference to negotiations prior to March 20.

Wilson testified that when the plant was evacuated on the afternoon of March 19, the respondent expected to resume operation on its next regular workday, Monday, March 22, and that the first intimation that he had that there was any question about it was a conference in the "late afternoon" on Saturday, March 20, at the office of the respondent's attorney, at which he, Tuteur, the respondent's president, and seven or eight A. F. of L. officials were present. The conference, Wilson testified, followed the receipt of the letter dated March 20. But this fails to account for either the reference in the letter to "pending present negotiations," or the publi-

Letter was not published Mar
20th, but on Sunday, the 21st. T
reference to the 20th is an error.
all other testimony as to the n
refers to Sunday, the 21st. (Tr.
449 and 477.) Furthermore,
Plain Dealer is a morning paper
a letter received the 20th could
have appeared until the follow
day. Petitioner has stipulated
correction, which disposes of the
taken conclusion as to the dat
the conference.

n of the letter in a newspaper
Iarch 20. The conference must
occurred not later than March
This is borne out by Wilson's
mony as to what occurred at
onference.

ilson testified that he, Julius
ur, Muehlhoffer and six or seven
representatives of the A. F. of
ere present at the conference
hat the A. F. of L. representa-
"asked us to close our plant
they might go over the situa-
and get their lines in order."
n testified that he did not
what led to the request "other
very obviously there was a
within the plant that was
ng the dissension (sic) within
nks," that though the respond-
id not consider "there was any
proportion" of dissenters, they
w there was a group that was
, as reported to us at least, to
lyte members of another or-
ation with whom we had a con-
" At the conference, accord-
Wilson, the A. F. of L. officials
it was an acute situation in
ant and we must close Monday
ng or they would not appear
ork Monday morning." What
F. of L. proposed to do after
utdown, Wilson testified, was
87) not discussed. The A. F.
Affiliates urge, however, that
demanded the closing of the
because of the strike, which,
have stated above, they claim
n organizational tactic of the
and, therefore, likely to re-
As we have already pointed out
is no proof that such was the
e of the strike, or that the
of L. Affiliates so regard
ntention that the strike was
son for the demand that the

See Wilson's testimony. (Tr. 255-6.) Also (Tr. 273) respondent was notified on the 20th to close its plant or A. F. of L. would strike.

plant be shut down is equally without support in the record. None of the representatives of the A. F. of L. Affiliates called as witnesses testified as to the negotiations with the respondent with respect to the shutting of its plant, nor did Wilson testify that any such reason was assigned. The reason for the demand by the A. F. of L. Affiliates is plain, and was communicated to the respondent. The A. F. of L. Affiliates were concerned, and demanded a shut-down, simply because "there was a group that was trying • • • to proselyte members" of the A. F. of L. Affiliates and the A. F. of L. Affiliates were determined to prevent further proselyting.

The threat of a strike was not made by the A. F. of L. for the first time after the sit-down. It had been made as early as March 17 because the men in the machine shop were "joining the C. I. O." and now was renewed for the same reason. We have stated above that the original threat furnished no justification for the respondent's action in coercing its employees to join the A. F. of L. Affiliates. The repetition of the threat did not justify it in shutting the plant in order to prevent its employees from exercising their right to self-organization.

In its brief the respondent in seeking to justify the shut-down urged that:

> Respondent had no choice in the matter, • • • because American Federation of Labor, under its contract, was the bargaining agent for its employees. • • •

The contract with the A. F. of L. Affiliates afforded no basis for interfering with the right of its old em-

This threat of a strike the respondent denies. **(Tr. 682.)** Also pure hearsay and this is the Board's second reference to it. **(Tr. 564.)** The evidence fails to support any such inference as the Board makes.

The respondent was fully justified in relying upon its contract with A. F. of L. Affiliates. This contract (the

yees, who constituted a large ma-
ity of all of its employees, to
m, join or assist a labor organiza-
n of their own choosing. (Tr. 188.)
e contract no more entitled the
pondent to shut down the plant
order to prevent these employees
m "joining the C. I. O." than it
used the respondent's prior ac-
n in coercing them to join the
F. of L. Affiliates.
The notice of the shut-down was,
der the circumstances that pre-
ed its publication, tantamount to
statement that the respondent,
in at the instance of the A. F. of
Affiliates, was taking action to
vent the organization of the
ited. The publication of the no-
e was itself, therefore, an inter-
ence with the rights of its em-
yees under the Act, and the shut-
vn was a lock-out to restrain the
rcise of those rights.
About 4 o'clock in the afternoon
March 19 a meeting of the United
s held in the Post Office building
East Cleveland, at which a large
nber of employees attended. Offi-
s were elected and apparently it
s voted to apply for a charter; an
plication for a charter was re-
ved by the national organization
out March 21, and a charter issued
out April 1. The membership
ds in A. F. of L. Affiliates, which
employees had signed in July
6, provided that the employee
reby designated the appropriate
F. of L. Affiliate as representa-
e for collective bargaining, and
ther provided that:

The full power and authority to
ct for the undersigned as de-
cribed herein supersedes any

second one) was in full force and effect in March of 1937. It had been freely negotiated at a time when all but 38 of respondent's employees were members of A. F. of L. There is no charge by the Board, and no evidence, that at the time this contract was made A. F. of L. Affiliates were assisted by the respondent, nor that the powers of attorney designating A. F. of L. as bargaining agents for a period of one year, were obtained or maintained through any assistance on the part of respondent.

An inference and not a finding, and wholly unwarranted by the evidence.

Application for charter was not made until April 1, 1937, Board's Exhibit 27. (Tr. 863.)

power or authority heretofore given to any person or organization to represent me and shall remain in full force and effect for one year from date and thereafter, subject to thirty (30) days written notice of my desire to withdraw such power and authority to act for me in the matters referred to herein.

(Tr. 180) On March 28 a meeting of the United was held, again attended by a large number of persons, for the purpose of securing formal resignations from the A. F. of L. Affiliates, which might be presented in a body. On Friday, April 2, 1937, United mailed a letter to the respondent stating that a majority of the respondent's employees had resigned from the A. F. of L. Affiliates and were members of United; that United represented the majority "as to settlement of grievances arising under the existing contract," and were ready to return to work under its terms; and that all grievances arising under the contract which affected members of United would thereafter be handled by the United committee signing the letter. Wilson testified that because the office was closed over the week end, the letter was not received until Monday, April 5, a few minutes after the plant had reopened under arrangement with the A. F. of L. Affiliates. Wilson did nothing about the letter other than to send it to counsel for the respondent.

We are satisfied that the arrangement under which the plant was reopened on April 5 was exactly set forth in a notice published by the respondent in the newspapers on April 3 and 4, 1937, directed to the respondent's employees. The notice

Evidence is undisputed that nothing was ever done to complete resignations, and no notices of resignation were ever given A. F. of L. Affiliates or to respondent.

Letter never followed up by resignations and third contract was signed later and still no resignations, or attempt to cancel powers of attorney given A. F. of L. to represent employees. In fact, such powers were renewed on signing of third contract in May, 1937.

The peace conferences held between C. I. O. and A. F. of L. show that any idea of A. F. of L. resignations was dropped. (Tr. 394.)

For other references to peace conferences see pages 92 and 93, *infra*.

ed that on July 6, 1936, the re-
ndent, at the employees' request,
entered into a contract with the
F. of L. Affiliates recognizing
n as the employees' duly chosen
nts for collective bargaining;
, thereafter, until June 23, 1937,
vas agreed that the respondent
loy only persons affiliated with
A. F. of L. Affiliates; and that,
r conferences with the em-
ees' agents, it was at their re-
st resuming operations April 5,
, but only those employees who
e members of the crafts under
tract with the respondent would
mployed. Attempt was made to
lain by the testimony of Wilson,
don, Toth and Muehlhoffer that
ad been agreed between the re-
ndent and the A. F. of L. Affili-
on April 3, before the notice
published, that old employees
e not to be required to show
they were in good standing with
A. F. of L. Affiliates in order
Tr. 190) return to work; that in
no such requirement was im-
ed except by the Polishers Union;
that even as to employees within
jurisdiction of the Polishers
on respondent was ignorant of
deviation from the terms of the
ement. We are entirely unable
redit this testimony.
Vilson admitted that he had re-
d to allow two employees to re-
to work on April 5 because they
not have clearance cards from
A. F. of L. Affiliates, that he
w of other similar cases, and
the agreement was that the
. of L. Affiliates should have the
decision as to who would re-
e a card. Muehlhoffer summed
he agreement made on April 3 as
iding that "all the people who

The arrangement claimed by respondent is clearly established by the testimony of Wilson **(Tr. 295)**, Gordon **(Tr. 757)**, Toth **(Tr. 737)**, Muehlhoffer **(Tr. 813-820-834)**.

Here again the Board, to justify its findings, discredits testimony offered for respondent.

In the Board's Note 39, it misdescribed the clearance card which is C. I. O.'s Exhibit 7. **(Tr. 864.)** *It does not contain an authorization for representation.*

go back in there to work the following Monday would carry a card issued by the respective organization." He also testified that "The entire responsibility of who was to go back in was turned over to the A. F. of L. Union." Wilson described the agreement in almost the same words. Muehlhoffer also admitted that even before the plant was reopened the Polishers Union had decided that their members who had become officers or committeemen in United would not be given clearance cards.

Muehlhoffer, Gordon and Toth testified that all of the A. F. of L. Affiliates, except the Polishers Union, gave a clearance card to all who applied, but none of them specifically denied the testimony of witnesses called by the Board who told in detail of cards being refused them, testimony which unlike the general statements by Muehlhoffer, Gordon, and Toth, is quite convincing.

Muehlhoffer testified that the respondent was not advised that some employees were refused cards. But it is clear, even from Wilson's own testimony, that the respondent expected the cards would be refused to some. Wilson admitted that simultaneously with the reopening of the plant on April 5 the respondent began hiring persons it had never previously employed, although no additional **(Tr. 191)** employees were needed for normal operations. Furthermore, if the respondent had not expected the A. F. of L. Affiliates to refuse cards to some employees, Wilson would hardly have "left word at the outside office that I was in no position to discuss matters with any individual and (such individuals)

See also Muehlhoffer's testim
(Tr. 834-5.)

Here again in the face of t
mony by unimpeached witnesse
respondent, the Board arbitr
holds the evidence unconvincing

There is no question but that
18 men, mostly polishers, were
fused cards by Muehlhoffer or
shop committee, but they were
pended members of the Polis
Union, and under its contract
respondent had no part in such
pute, and its refusal to clear the
without a card, in such case,
proper.

should go through the routine channels." Moreover, it was established by uncontradicted testimony that Julius Tuteur, the respondent's president, in the presence of Paulus and Wilson, as well as Frank Ledasil, representative of the Federal Union, was advised by Mitchell France, an old employee and a member of the union, that he had been refused admittance to the plant on April 9 on the ground tht he had no card; and that Tuteur himself had stated that France would have to obtain a card. Similarly it was shown that William H. Fogarty and Frederick Frank, old employees, told Paulus of their unsuccessful efforts to obtain a card, only to be advised that a card was essential.

The A. F. of L. Affiliates which had again conferred with the respondent during the week of March 21, circulated to their members on March 31, the following notice:

To employees of Electric Vacuum Company:

Representatives of A. F. of L. organizations having a working agreement with the Electric Vacuum Company have endeavored to clear up the situation that resulted in the closing of the plant. Conferences have been held with representatives of the Company and it is now our opinion that the real solution to the problem is proper enforcement of the present agreement, and that no one be allowed to resume work unless affiliated with these organizations.

We are interested in having the plant reopen Monday April 5th and in order to get a definite expression from the membership a Special meeting will be held,

No proof whatever that respondent knew of or had to do with this notice nor did it attend the meeting.

Friday April 2nd at 2 P. M.
1000 Walnut Ave.,

(Tr. 192) We urge all members to attend this meeting so operations may be resumed Monday morning.

The meeting was held on April 2 and the employees present voted to return to work on April 5. Gordon testified that

> we called a general meeting for the membership and again the matter was broached that if they had stuck to strictly closed shop, we wouldn't have had any trouble at all because fourten or fifteen people out there started this rumpus and the group was disgusted for their interference and losing them, and we were definitely instructed to tell the management that the group was going to work under strictly closed shop conditions, and most of the conferences were on that subject.

Gordon further testified that at a conference with the respondent on the following day,

> we asked the management that the group wanted a strictly closed shop, and after them discussing the matter a while, it was agreed to let the matter lay for a while until after we got under operations and then we could go to work and get the closed shop through as to the wishes of the body.

Gordon was not a credible witness. We have referred above to his account of the conferences with the machine shop employees in the respondent's offices on March 16, 17 and 18. His version of the meeting of April 2 and the conference of April 3 is equally implausible. If

Gordon's testimony. **(Tr. 754-75**

Again the Board, because G
don's testimony is contrary to
theory, arbitrarily discredits him,
it has Wilson and other witne
for respondent. We ask the Co

the A. F. of L. Affiliates had consulted "the wishes of the body" on April 2, there would have been no occasion for deferring the demand for a closed shop until the sentiment of the members was ascertained. Moreover, Toth, Gordon's associate, admitted that the notice, published by the respondent on April 3, had been prepared and agreed upon prior to the conference held that morning. Furthermore, the notice of the meeting issued by the A. F. of L. Affiliates on March 31, and the notice of reopening of the plant published by the (Tr. 193) respondent on April 3 contained exactly the same misrepresentation as to the agreement between the respondent and the A. F. of L. Affiliates. Both misrepresented that the contract entered into in 1936 provided for a closed shop. Nor may the misrepresentations be regarded as "inadvertent." Admittedly the respondent's notice was not published until approved at the conference on April 3 at the office of counsel for the respondent; and it was on its face a carefully worded statement. We have no doubt, and we find, that both notices were part and parcel of a single plan devised and executed by the respondent and the A. F. of L. Affiliates to liquidate the United activities among the respondent's employees, and to do so without risking the reaction that might follow upon an announcement that the respondent and the A. F. of L. Affiliates had decided to do so by entering into and enforcing a closed-shop agreement.

The notice published by the respondent unquestionably misrepresented to the employees the terms of the oral agreement of 1936, and the misrepresentation was obviously a

to bear in mind that in this case no intermediate report was filed by an examiner, so the Board, in its attitude toward witnesses, did not have the benefit of the opinion of anyone who heard and saw these witnesses on the stand. Furthermore, in many instances the Board, when it suits its purpose, depends on the testimony of these witnesses.

deliberate attempt to give the semblance of legality to the respondent's conduct immediately prior to the shut-down, to justify the shut-down itself, and to conceal the fact that the closed-shop agreement set forth in the notice was of recent and consequently tainted origin. There hardly could have been devised a stratagem more calculated to aid the A. F. of L. Affiliates to retain and regard their members, and to cut the ground from under the employees who had sought to organize a United Group. Not only did the notice present an ultimatum, the respondent thereby also concealed from its employees that what was involved was their legally protected right to make a choice of representatives without thereby risking discharge.

In substance, though not in form, the arrangement effected between the respondent and the A. F. of L. Affiliates on or about April 3, 1937, was an abandonment of the oral agreement as insufficient to meet the exigencies of the (Tr. 194) situation and its replacement by a closed-shop agreement. This, the A. F. of L. Affiliates conceded at the oral argument before the Board, was the case. They contended, however, that such an agreement was entirely valid. The contention, however, was rested upon a number of claims which we have found without merit. Thus it is the position of the A. F. of L. Affiliates that prior to April 3, the respondent had engaged in no unfair labor practices, except the allegedly accidental discharge of Ramsey; that the respondent had been subjected to a sit-down strike called as an organizational tactic by the

The Board's position as to the notice is inconsistent. First it is found to be misleading and a false statement, and then to indicate an abandonment of the original contract. If false that is one thing, but if an abandonment of the original contract and correctly states the then existing arrangement, it was not false or misleading.

ited and conducted by it with vio-
ce and destruction of property;
t while the United was legally en-
ed to solicit members of the A. F.
L. Affiliates it had indicated a
n to cause defections by violent
l unlawful means. Upon this
w of the facts, the A. F. of L.
liates contend further that they
re authorized to enter into the
sed-shop agreement since they
l been designated as collective
gaining representatives by a ma-
ity of employees in July 1936 by
nbership cards which stated that
h designation was for a period
l year, "and thereafter subject to
rty (30) days notice of desire to
hdraw," and it is urged such des-
ation must be presumed to have
tinued in effect until April 1937
he absence of proof of notice of
hdrawal. As we have pointed out
ve the afore-mentioned conten-
s with respect to the actions of
respondent and the United are
irely at variance with the facts.
re is, consequently, not here pre-
ted the question whether during
term of a contract between a
or organization and an employer
within the period for which the
or organization had been desig-
ed as collective bargaining repre-
tative by a majority of em-
yees, a supplementary closed-shop
eement may validly be made to
vent defections from such labor
anization. The situation here
sented is one where during the
e preceding the making of such
upplementary agreement the re-
ndent at the instance of the A. F.
. Affiliates, had flagrantly inter-
d with, coerced, and restrained
employees in their right to join
assist the United, and had co-

This part of the finding is argumentative, and based on a wrong premise. A. F. of L. represented a clear majority of respondent's employees at the time the 1936 contract was negotiated. There was no taint or charge of coercion in the making of this contract. It was in full force and effect in April of 1937, and until the third contract was made, and respondent was therefore justified in contracting anew, or if you please, modifying or supplementing its contract with A. F. of L., in full reliance upon the fact that A. F. of L. was bargaining agent for employees. This is further supported by the powers of attorney which were unrevoked.

erced them to affiliate with the A. F. of L. Affiliates. By (Tr. 195) reason of such unfair labor practices by the respondent immediately antecedent to the supplementary closed-shop agreement, the new agreement was unquestionably illegal and void, and its publication and application constituted interference with the rights of its employees under the Act.

In fact, the arrangement of April 3, 1937, was merely another act of the same character as the previous interference, restraint, and coercion, and differed only in the irrelevant element of formality. The Act does not, however, permit illegality to become transmuted into legality by the embodiment of unfair labor practices in an agreement. That device affords neither an estoppel nor a franchise. Section 8 (3) of the Act carefully negatives such a possibility by excluding from permissible agreements imposing union membership as a condition of employment, an agreement entered into between employers and labor organizations which have been established, maintained, or assisted by unfair labor practices. And here there had been such assistance, persistent and solicited, if not demanded, by the A. F. of L. Affiliates.

The contention that the A. F. of L. Affiliates must be presumed to have represented a majority of the respondent's employees on April 3, is obviously beside the point. Section 8 (3) of the Act precludes the execution of a closed-shop with a labor organization established, maintained or assisted by unfair labor practices, irrespective of whether it has or has not been designated as collective bargaining agent by a majority of the employees. Accordingly it is un-

For answer to this argument se
respondent's brief.

There can, in view of the way th
powers of attorney were given A. F
of L. by the majority of respondent'
employees, be no claim that A. F. o
L., in securing such powers, was a
sisted by respondent.

This argument is just as specio
as the one above.

necessary to determine whether in the absence of the respondent's unfair labor practices, the A. F. of L. Affiliates would be presumed to have continued to be, on April 3, the bargaining agent designated by a majority of the respondent's employees. Moreover, having solicited the unfair labor practices which effectively impaired, if they did not completely destroy, the possibility of free choice of their bargaining agent by the respondent's employees, the A. F. of L. Affiliates, like the respondent, are in no position to invoke a rule of presumption which has for its purpose the determination of whether at a particular time a labor **(Tr. 196)** organization remains the freely designated representative of employees.

By May 20, 1937, the respondent had filled all the jobs that existed on March 22 and had increased its working force to approximately 1100 employees. According to the payrolls, approximately 583 of that number were employees who had been with the respondent prior to June 1935, when the first oral agreement was made. As we have stated, employees who resumed their jobs after April 5, 1937, had been required to obtain clearance cards. Gordon testified that on May 20, 1937, there were no old employees who were not members of the A. F. of L. Affiliates and that substantially all other employees had joined.

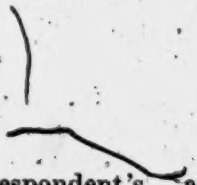
On May 20, 1937, a new agreement was entered into between A. F. of L. Affiliates providing for recognition of the A. F. of L. Affiliates as the bargaining agents for all of the respondent's employees, and for a completely closed shop. This agreement, which by its terms ran for 1 year, and thereafter from year to

year unless notice of termination was given 30 days before the end of the annual period, was individually approved by the large majority of the employees at a meeting of the A. F. of L. Affiliates held for that special purpose before the contract was executed. But what we have said with respect to the agreement of April 3, 1937, is entirely applicable to the contract of May 20, 1937. In the intervening period the respondent had merely continued its unfair labor practices under the guise of performance of a closed-shop agreement which had no validity. Manifestly under such circumstances the majority of the A. F. of L. Affiliates and the purported referendum are irrelevant.

We find that by the various activities set forth above, the respondent, during the period beginning in March 1937 and continuing through May 20, 1937, aided in the organizational activities of the A. F. of L. Affiliates and hindered and impeded the organizational activities of United, and has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

(Tr. 197) B. The discriminations as to tenure of employment.

The complaint alleges that the respondent, on or about April 5, 1937, and at all times thereafter, failed and refused to recall 28 employees. No evidence was offered with respect to four of those named, Frank Erzen, Austin Ballard, Frank Hunck and William Krall. As to them the complaint will therefore be dismissed without prejudice. As to each of the remaining 24 the allegations of the complaint are sustained.



Respondent's answer to Board's argument here is the s as above stated.

All that respondent did was in reliance that A. F. of L. represen its employees, and it was entitled rely on the powers of attorney gi by the employees to a union, wh in securing them was not maintai or assisted by respondent. All acts the Board is complaining ab occurred during the life of the ond contract.

The findings as to discriminat are considered in detail in respo ent's main brief.

Nineteen of the twenty-four employees as to whom we hold discrimination proven were old employees. In their case it is, of course, unnecessary to review the evidence as to the various occasions when they were refused employment because they had not obtained clearance cards, or when they were refused clearance cards, or when, after they had obtained clearance cards, they were refused employment allegedly because their jobs meanwhile had been filled by persons hired for the first time on or after April 5, 1937. We have pointed out in Section III A (2) above that these employees were never affected by the oral agreements, and that the agreement of April 3, 1937, furnished no justification for requiring them to be members in good standing of the A. F. of L. Affiliates as a condition of returning to work. We have also pointed out in Section III A (2) above that pursuant to the latter agreement employment was given only to those who complied with that **(Tr. 198)** condition and that the places of those who did not were filled by persons hired to replace them.

The only employees were not required to go through the meaningless gesture of asking to be taken back without a clearance card; and they were within their rights in not applying for a clearance card. The refusal of employment to them was in fact immediate upon the reopening of the plant, and because the respondent never withdrew the conditions improperly imposed, the refusal was a continuing one.

Obviously there is no merit in the contention made by the respondent in its brief that in such a case an

Of these nineteen, all but one was a member of A. F. of L. prior to the sit-down strike. Nearly all eighteen union men belonged to the polishers, and had been suspended by their union.

They were, therefore, not in the exempt class created by the oral agreement, and if required to continue in their union respondent did not have to take them back without a union card.

On April 3rd the contract was a closed shop, and in such case, they were also disqualified.

employer may plead as a defense that an employee tardily applied for reemployment under the illegal condition and was rejected because his place had been meanwhile filled by one never employed before. From and after April 5, 1937, these employees were in the same position as any employee avowedly discharged because of his union activities. That thereafter such an employee obtains reemployment by accepting conditions which the employer had no right to impose merely ends the direct consequence of loss of wages and requires only that that circumstance be taken into account in determining the remedy for the unfair labor practice.

We accordingly find that respondent has at all times failed and refused to recall to employment the following persons employed by respondent when the plant was shut down on March 22, 1937: William Behrse, Steve Dragosa, William H. Fogarty, Mitchell France, Frederick Frank, John Kern, Edward Koutnik, Ncholas Kozma, Arthur Kruse, Howard Lowrance, Joseph Macho, John Masters, Alfred Meissner, George Onda, Edward Rericha, Mike Smith, Arthur Troyan, and Theodore Vitosky. We also find that respondent failed and refused to recall to **(Tr. 199)** employment, except for the period from April 26, 1937, until May 10, 1937, Harold Keehl, employed by respondent when the plant was shut down on March 22, 1937.

Keehl's reemployment during this brief period seems quite accidental. He obtained a clearance card on April 9, 1937, returned to work on April 14, was notified by his foreman that he would have to secure the approval of Ledasil of

As is shown in the main br
of respondent, these men either
fused to return when they agreed,
were not entitled to return.

The Board has failed to give a
consideration to a compromise ma
between C. I. O. and A. F. of L. as
men returning, which agreement w
made independently of respondent
and through the office of, and at t
instance of, the Board's Regional D
rector at Cleveland. By this
rangement A. F. of L. consented
approve any employees then retu
ing to work, but most of them stay
out the balance of the week.

he Federal Union; he did not do so, but returned to the plant on April 26 and worked until May 10 when his foreman told him that there was a notice for him to see Ledasil and pay up his dues in order to hold his job. When he was unable to do so at once, Ledasil refused to accept any postponement in payment and said he would be notified when he might present his case to the Union, but he never received such notice. We are satisfied that Keehl's brief period of reemployment was merely a temporary oversight on the part of the respondent and presents nothing essentially different from the other cases.

As stated above, we find the charge of discrimination also sustained with respect to five new employees. What has been said by us as to the status of old employees on and after April 5, 1937, is no less applicable to them. True, prior to April 5, 1937, they might, after notice of the oral argument, have been refused employment unless they became or remained members in good standing in the A. F. of L. Affiliates. True also, where a valid agreement is replaced by an invalid one, the earlier agreement may retain its vitality for its original term. But we have found that on April 3, 1937, not only was a new agreement made but the earlier oral agreement was mutually abandoned by the respondent and the A. F. of L. Affiliates as useless for their purposes, because of the rise of the United, and the fact that the majority of the respondent's employees were subject thereunder to no restraint against their becoming members of United and terminating their membership in the A. F. of L. Affiliates.

327-8-9, 392-3-4-5, 459, 466, 478, 486, 498, 541, 602, 638.) (Behrse at 576.)

Moreover, we find that the oral agreement is irrelevant to the issue of discrimination since its existence was never brought to the notice of the new employees. The only notice they were given was of the agreement of April 3, **(Tr. 200)** 1937, an agreement which they were entitled to disregard. Certainly it cannot be said they were somehow to divine from such a notice the existence of an antecedent valid oral agreement relating to new employees only. We have pointed out in Section III A (2) above that an employer may not even, pursuant to a valid agreement, threaten an employee with discharge for failure to join a labor organization unless the employee is advised of the existence of the agreement. We see no reason to distinguish the case where the employer shuts down its plant and on reopening, without giving notice of the existence of an agreement, requires membership in a labor organization as a condition for returning to work.

Accordingly we find that the new employees were within their rights in not applying for a clearance card, that by virtue of the notices published on April 3 and 4, 1937, they were refused employment on the reopening of the plant and that the refusal was a continuing one. We accordingly find that the respondent has at all times failed and refused to recall to employment Leo Pierret, Jewell Smith, and Joseph Washko, employed by the respondent when the plant was shut down on March 22, 1937; and has failed and refused to recall to employment until May 19 and 24, 1937, respectively, James Mitchell and Rudolph Rummell, employed by the respondent when the plant was shut down on March 22,

We have previously shown there was notice of the oral a ment. See comment on finding pages 51 and 54, *supra*.

1937, and who have since May 19 and 24, 1937, respectively, been given employment by the respondent at their former jobs.

On the basis of the foregoing, we find that the respondent, in refusing and failing to recall the aforesaid persons to employment except upon condition that they secure approval of the A. F. of L. Affiliates, has discriminated against said employees with respect to hire and tenure of employment in order to discourage membership in the United and encourage membership in the A. F. of L. Affiliates, and has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed by Section 7 of the Act.

(Tr. 201) The respondent contends that it is, or should be absolved of the charge of discrimination by reason of an agreement made on April 7, 1937, between the United and the A. F. of L. Affiliates whereby the latter agreed to issue clearance cards to all employees who became members. Though disclaiming any part in this agreement, the respondent claims the benefit thereof but urges that it is not chargeable with the immediate breach thereof by the A. F. of L. Affiliates, of which we find it had knowledge. Even if the agreement had been one to which the respondent were a party, or had been one which it had thereafter in some manner adopted, it is clear that the agreement would not affect the power of the United to file, and of the Board to accept, the charges in the present proceedings, or lead the Board, as a matter of discretion, to withhold action on the respondent's unfair labor practices. The Board

See reference on pages 92 and 93. Board secured agreement between C. I. O. and A. F. of L. which serves further to show this whole difficulty was a fight for organization between two unions in which the respondent should not be concerned, and the Board through its Regional Director tried to make peace. Respondent took no part in these peace conferences.

was not a party to the agreement. Hence it is clear that, since Section 10 (a) of the Act makes exclusive the power of the Board to prevent persons from engaging in unfair labor practices affecting commerce, even an agreement binding a labor organization not to file charges of unfair labor practices with the Board, would not be binding upon the Board or in any manner affect the validity of charges filed with the Board. The agreement in the instant case, moreover, did not purport to be, and was in no sense an agreement by the United not to file charges with the Board; on the contrary, it was no more than an attempt to secure employment for those of its adherents who were willing to comply with a condition which we have found was unlawfully imposed by the respondent. Indeed, the respondent, having misrepresented the facts with respect to the closed-shop agreement and thereby concealed its illegality, is hardly in a position to urge any argument of estoppel. Furthermore, the agreement of April 7 having been breached by refusals of the A. F of L. Affiliates to issue clearance cards, the agreement affords no reason why the Board should not act upon the charges **(Tr. 202)** filed by the United. Finally, in the instant case, to give to the agreement of April 7 the effect now urged by the respondent, would be to sanction the continuance of the respondent's unfair labor practices, since, as we have pointed out above, the closed-shop agreements of April 3 and May 20, 1937, were merely the embodiment and formalization thereof. It is

lear, therefore, that an order should ssue that such unfair labor prac- ices shall cease.

The remaining portion of the findings refers to wages earned by various mployees up to the date of the hearing before the examiner, and unless there s now found discrimination against the employees, this part of the finding eeds no comment, but is covered in respondent's main brief. Furthermore, f discrimination is found, the compensation to be paid would be a matter to e worked out with the Board, and it is unnecessary to burden this Court ith such presently irrelevant matters.

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No. 588

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

NATIONAL LABOR RELATIONS BOARD, PETITIONER,

v.

ELECTRIC VACUUM CLEANER COMPANY, INC.; INTERNATIONAL MOLDERS' UNION OF NORTH AMERICA, LOCAL 430; PATTERN MAKERS' ASSOCIATION OF CLEVELAND AND VICINITY; INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT NO. 54; METAL POLISHERS' INTERNATIONAL UNION, LOCAL NO. 3; AND FEDERAL LABOR UNION NO. 18,907, RESPONDENTS

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR UNION RESPONDENTS.

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BRIEF FOR UNION RESPONDENTS.

Opinions Below.

The opinion of the Circuit Court of Appeals (R. 867-875) is reported in 120 F. (2d) 611. The findings of fact, conclusions of law, and order of the Board (R. 150-217) are reported in 18 N. L. R. B. 591.

Jurisdiction.

The decree of the Circuit Court of Appeals was entered on June 6, 1941 (R. 866). The petition for a writ of certiorari was filed on September 6, 1941, and was granted on October 20, 1941. The jurisdiction of this Court rests upon Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925, and upon Section 10(e) of the National Labor Relations Act.

Statement of Facts.

The Statement of Facts contained in the Board's brief is inadequate in several respects. In so far as possible, relevant facts there stated will not be repeated in the following general statement.

In March of 1935, the Mechanics Educational Society, an independent labor organization representing a considerable number of employees of the Electric Vacuum Cleaner Company, one of the respondents herein, called a strike at the plant for the purpose of obtaining an increase in wages and a betterment in working conditions. The strike lasted for ten weeks, during which time the plant remained closed and the business of the employer was greatly disrupted. While the strike was in progress, representatives of the M. E. S. contacted various organizations affiliated with the American Federation of Labor for the purpose of obtaining assistance from the American Federation of Labor in the strike effort. Assistance was promised and rendered, and the strikers affiliated with the various A. F. of L. organizations, respondents herein (R. 159). By June of 1935, 610 of the 801 employees then employed became dues-paying members of the various A. F. of L. affiliates (R. 160).

In an effort to terminate the strike, the American Federation of Labor presented a contract to the Company calling for increases in wages and other favorable conditions,

which contract had been approved by a vote of the membership. By the end of June the Company finally agreed to the contract, but only after having been presented with proof of the overwhelming A. F. of L. majority.[1] The employees returned to work completely satisfied with what had been obtained under the contract (R. 160).

The contract was partly written and partly oral, the oral portion referring to the obligation of the employees to become or remain members of the Union.[2] There is a considerable difference of opinion concerning the scope of the oral agreement. The contracting parties state that under the oral agreement all new employees were to become members of the Union, and all employees who were members at the time of the contract were to remain members during the term of the contract, but that old employees who never were members of the Union were not obliged to become members. This version seemingly was upheld by the court below. The Board maintains that the oral contract required merely that newly hired employees were to become members of the Union. The evidence respecting these two versions will be discussed in a later portion of this brief. It is undisputed, however, that the contract granted the A. F. of L. affiliates exclusive recognition and exclusive bargaining rights for a period of one year, and that the contract was perfectly valid when made.

In addition, the 610 employees who were members of the Union at the time the contract was entered into had then signed individual authorization cards giving full power of attorney to the American Federation of Labor to represent such employees in all matters respecting

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[1] It should be noted that this was prior to the passage of the Wagner Act.

[2] Why this portion of the contract was not in writing does not appear in the record. The fact that the employer was a member of a Cleveland trade association opposed to closed-shop agreements might offer some explanation.

wages, hours and working conditions for a period of one year. The power of attorney could be revoked only after a thirty-day notice in writing. These powers of attorney had been presented to the employer for examination as proof of the A. F. of L. majority when the contract was negotiated. A copy of the power of attorney is set forth below.[3]

Production was resumed following the signing of the contract, the Company announcing publicly to its employees that the Company would maintain a peaceful and friendly relationship with the Union, and that any attempt to disturb such peaceful and friendly relationship would be considered as contrary to the best interests of the Company and would be punishable by discharge (R. 291). Operations

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[3] AUTHORIZATION FOR REPRESENTATION.

I, the undersigned, employee of the Electric Vacuum Cleaner Co. employed as Assembler hereby authorize my .....
.....(craft-Mechanic, Helper or Apprentice)
Craft Organization, affiliated with the American Federation of Labor,

	Membership Fee
Metal Polishers International Union	$3.50
International Association of Machinists	3.75 and $5.00
International Molders Union of N. A.	3.00 and 5.00
Pattern Makers Association	5.00 and 7.00
Federal Labor Union	2.50

to represent me and, in my behalf, to negotiate and conclude all agreements as to hours of labor, wages and other employment conditions. I also authorize the Company to deduct, within thirty days, from wages due, the prevailing initiation or reinstatement fee of the organization as indicated hereon and transmit same to the authorized representative of the organization.

The full power and authority to act for the undersigned as described herein supersedes any power or authority heretofore given to any person or organization to represent me, and shall remain in full force and effect for one year from date and thereafter, subject to thirty (30) days' written notice of my desire to withdraw such power and authority to act for me in the matters referred to herein.

Signature of employee.
(Union label)

continued without interruption until March of 1937.[4] All grievances and disputes were promptly settled under the contracts and the relationship between the employer and the employees was at all times completely harmonious (R. 285, 724).

In March of 1937, at a time when both the contract and the individual powers of attorney had five months to run, the C. I. O. United Electrical Workers commenced an organizing campaign in the plant. The C. I. O. activities were centered in the machine shop employing about 150 employees (R. 281), where it claimed to have enrolled 60 employees into membership (R. 170). With the advent of the C. I. O. at the plant, the difficulties which were the subject of the Labor Board case took place. The American Federation of Labor, as the exclusive representative of the employees both under the contract and the powers of attorney, took steps to protect its contract against the C. I. O.'s raid, and to maintain normal production as agreed upon. These steps, as set forth in the Board's decision (R. 150), consisted of soliciting 12 machine shop employees to become members of the American Federation of Labor with employer assistance; requesting the discharge of one machine shop employee for refusal to join; and requesting the employer to shut down the plant for a period of ten days. This request followed a sit-down strike staged by the C. I. O. in the machine shop—a strike in direct violation of the existing contract (R. 849) and resulting in considerable disruption and violence. During the period that the plant

[4] The 1935 contract had been renewed in July of 1936 for a period of one year, and the renewal contract was ratified by a vote of the full membership. At the time of this renewal, the American Federation of Labor again presented the company with evidence of its membership, such evidence consisting of newly signed powers of attorney as described above. 771 of the 809 employees employed in July, 1936, had signed such powers of attorney which were binding until July of 1937. No employee at any time revoked or attempted to revoke any such power of attorney.

was shut down, the A. F. of L. affiliates, in an effort to maintain harmonious relationships under its existing contracts, negotiated a supplemental contract with the Company requiring all employees of the Company to become members. This supplemental contract was entered into on April 3, 1937,[5] and the plant was opened and normal production was resumed the next day. All employees were offered employment and the Union offered to accept all employees into membership regardless of their participation in the sit-down strike or their C. I. O. activities. Some 24 machine shop employees who refused to join the American Federation of Labor and to obtain clearance cards were refused employment upon the request of the A. F. of L. under the terms of the supplemental contract. Of these 24, 16 were former members of the A. F. of L., 5 were new employees who had not become members, and 3 never were members (R. 197, et seq.).

Upon complaint filed by the C. I. O. in May of 1937, and after hearings and the issuing of a previous decision which was withdrawn on the Board's own motion after an appeal had been filed in the Circuit Court, resulting in a delay of many months (R. 154), the Board, on December 21, 1939, issued a second decision in which it found the employer guilty of unfair labor practices in permitting and participating in the foregoing activities of the A. F. of L. representatives. The Board held that the Company had thereby afforded illegal assistance to the American Federation of Labor. It ordered the Company to reinstate the discharged employees and to abrogate its May, 1937, contract with the American Federation of Labor, the closed-shop provisions immediately, and the entire contract at any time another organization was certified. It made no finding that the A. F. of L. did not represent an uncoerced majority of the Company's employees either previous to or at

[5] This contract was formally set up in writing and signed on May 20, 1937.

the time of the making of the May or April contract, stating merely that, because some assistance was given, the contract was illegal. The Board considered it immaterial that the alleged acts of assistance took place during an admittedly valid contract which called either for exclusive recognition or maintenance of membership and during the terms of individual powers of attorney conferring exclusive bargaining rights upon the Union.

Preliminary Discussion.

The foregoing undisputed facts indicate quite clearly that all of the employer's difficulties with the Labor Board are the direct result of an attempt by the C. I. O. to raid a plant which had already been organized and which was operating harmoniously under a collective bargaining contract completely satisfactory to the employees covered by it. This practice of raiding has been strongly condemned by the President of the United States (See New York Times (June 14, 1941)). Indeed, it is hardly open to debate that for any labor organization thus deliberately to seek to disrupt an entirely harmonious relationship, particularly by resort to the sit-down strike, during the term of a beneficial and satisfactory labor agreement is an entirely reprehensible practice. Certainly, no one (the Board has not) would assert that the acts of the A. F. of L. affiliates, acquiesced in by the employer, had no moral or ethical justification—that a similar reaction to attempts to raid its membership and to disrupt its employer relationship could not be expected of any other labor organization which had achieved a highly beneficial bargaining contract after a long and costly strike, particularly when 95% of all the employees in the plant were dues-paying members of the organization, and that an employer would not similarly respond. But the Board says that it is not concerned with the science or philosophy of union ethics—it is concerned with an Act in which Congress has declared certain activi-

ties to be unlawful regardless of their moral justification. It may be true that we are concerned with an Act in which Congress has, for certain specific reasons, outlawed certain practices, and that we are bound by the Act and by the intent of Congress thereunder. That Act, however, has for its fundamental purpose and ultimate objective the establishment of peaceful industrial relationships through the media of mutually agreeable collective bargaining contracts, and the practices which it has outlawed are practices which prevent or interfere with the attainment of that objective—not every practice regardless of the circumstance under which it occurred. The Board has held in this case, however, that the Act forbids attempts to withstand such raiding tactics if it involves the giving of any assistance, even though the "assistance" was rendered at the request of an exclusive bargaining representative during the terms of valid individual and collective contracts. It would seem anomalous that the same Act which fosters collective bargaining relationships should outlaw attempts to maintain by peaceful means an harmonious contractual relationship freely entered into. The Circuit Court of Appeals for the Sixth Circuit, in a unanimous opinion, has held that the Act does not present that anomaly; that the activities of the employer, engaged in at the request of the exclusive representative, were justified under the law.

Summary of Arguments.

Respondents advanced four theories before the court below, under which the Board's order must be set aside. Three of these were in effect sustained and the fourth was not passed upon. Respondents advance these same four arguments here:

1. The first argument asserts that the Board's findings and conclusions respecting the scope and intent of the oral

contract are not supported by the evidence, and that the evidence clearly indicates that the scope and intent of the oral contract was to require all employees who were members of the Union at the time of the contract to remain members, as well as all new employees to become members.

2. The second argument can assume the correctness of the Board's conclusions as to the scope of the oral contract. It is contended that nevertheless the employer was justified in engaging in the so-called acts of interference, and that the "assistance" was valid under the Act. Such "assistance" was valid for the reason that it was rendered at the request of an exclusive bargaining representative during the existence of a valid exclusive bargaining contract and valid individual powers of attorney signed by 95% of the Company's employees, and because such "assistance" was rendered in an effort to maintain the stable and harmonious relationship agreed upon and to withstand the C. I. O. raid.

It can be demonstrated by the Legislative history of the Act and by a regard for its ultimate purposes that Congress did not intend that the right of employees to complete freedom of choice as to representative was to be as unqualified before the execution of a valid collective bargaining contract and before the execution of valid individual powers of attorney as subsequent thereto. The necessity for achieving a stability in industrial relations, through the execution of binding collective agreements; the fact that Congress, under Section 9, gave an exclusive representative extremely broad and unqualified rights to negotiate in respect to all matters affecting employment; and the fact that Congress permitted the closed shop, all indicate that Congress did not and would not have intended that the rights of employees to freedom from interference or freedom in choice was at all times completely unqualified. Congress is

concerned in seeing to it that collective bargaining agents are freely chosen to begin with; once that preliminary objective has been realized and a freely selected bargaining representative is in existence, the right to freedom from interference as to choice necessarily must be limited under certain circumstances if the ultimate purpose of the Act—stability in industrial relations through mutually satisfactory collective bargaining relationships—is to be achieved.

3. The third argument asserts that, since the A. F. of L. was insured of representing a majority during the terms of the individual powers of attorney, and since those powers of attorney were in full force and effect at the time of the April and May closed-shop contracts, the A. F. of L. necessarily then represented a valid majority and could lawfully enter into a closed-shop contract. Whatever acts of assistance the employer rendered would be completely immaterial because the A. F. of L.'s majority was at all times guaranteed and nothing that the employer could do could operate either to assist the A. F. of L. or to destroy the individual commitments that the Union had secured.

4. The fourth argument can assume as correct all the Board's findings of fact and most of its conclusions of law, i.e., it can assume both that the oral contract required only new employees to become members and that all of the various acts of "assistance" were illegal and unjustified under the Act. The Board found it immaterial and unnecessary to make a finding that the A. F. of L. did not represent an uncoerced majority at the time of the April or May full closed-shop contracts. (The Board, in effect, admits an uncoerced majority at that time and, in fact, could not validly make a finding of a coerced majority because of the existence of the unrevoked, freely entered into powers of attorney.) Since the A. F. of L. then did

represent an uncoerced majority, and a majority which had neither been obtained nor maintained by any acts of "assistance", the A. F. of L. and the Company had a right to enter into the closed-shop contract under Section 8(3) of the Act, and the discharges under such contract were valid. The Board's theory that *any* assistance whatsoever, regardless of the effect on the majority, incapacitates a labor organization from entering into a closed-shop contract is incorrect and contrary to the provisions and purposes of the Act.

The court below did not pass upon this argument.

This fourth argument will be discussed first because, if adopted, it will be unnecessary to inquire into the extent and validity of the various acts of assistance, and will afford complete support for the decision of the court below, in so far as such decision set aside the order of the Board abrogating the closed-shop contract and ordering the reinstatement of the 24 employees discharged thereunder.

ARGUMENT.

I.

A labor organization in fact representing an uncoerced majority is not incapacitated from entering into a closed-shop contract because of prior employer assistance not affecting such majority.

Section 8(3) of the Act reads as follows:

> "It shall be an unfair labor practice for an employer by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, secs. 701-712), as amended from time to time, or in any code or agreement approved or pre-

scribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9(a), in the appropriate collective bargaining unit covered by such agreement when made."

Section 9(a) of the Act provides that:

"Representatives designated or selected for the purposes of collective bargaining by the *majority* of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment."

The Board takes the position that under the proviso clause in Section 8(3) of the Act *any* act of assistance on the part of the employer, regardless of its effect on the majority, is sufficient to render illegal a closed-shop contract, or to incapacitate a labor organization receiving such assistance from entering into such contract, even though the employees comprising the majority were entirely unaffected in their choice as to a collective bargaining agent. In other other words, the Board insists that under the literal language of Section 8(3) if 999 out of 1000 employees (or, as in this case, 771 out of 809) joined an organization of their own free choice and desired to enter into a closed-shop contract through their representative with an employer to protect their membership, and the one thousandth employee was told (or, as in this case, some of the 38 were told) by the Company to join the organization, thereby *assisting* the organization, a closed-shop contract consummated with that representative would be invalid and the desires of the uncoerced majority frustrated.

Respondent Unions assert that a labor organization is barred from entering into a closed-shop contract only if it did not then represent an uncoerced majority—*i. e.*, only if the "assistance" operated to obtain or maintain the necessary majority.

The Board, in conformity with its position (see Board's brief, pp. 29-38), has found it unnecessary and irrelevant in the present case to make any finding as to whether the admittedly valid majority of the American Federation of Labor was maintained by the so-called assistance or whether the American Federation of Labor *did not represent an uncoerced majority at the time of the April 3rd or May 20th contracts.*[6] The Board made no finding that the American Federation of Labor did not represent an uncoerced majority at the time it entered into the April, 1937, closed-shop contract.

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[6] See Board's decision (R. 195) where it specifically found it unnecessary to determine whether the A. F. of L. majority had been maintained:

> "The contention that the A. F. of L. affiliates must be presumed to have represented a majority of the respondent's employees on April 3rd, is obviously beside the point. Section 8(3) of the Act precludes the execution of a closed shop with a labor organization established, maintained or assisted by unfair labor practices, irrespective of whether it has or has not been designated as collective bargaining agent by a majority of the employees. Accordingly, it is unnecessary to determine whether, in the absence of the respondent's unfair labor practices, the A. F. of L. affiliates would be presumed to have continued to be, on April 3, the bargaining agent designated by a majority of the respondent's employees."

See further its decision (R. 196) where the Board specifically held that the fact of whether the A. F. of L. represented a valid majority of its employees at the time of either the April 3rd or May 20th agreement was entirely irrelevant:

> "But what we have said with respect to the agreement of April 3rd, 1937, is entirely applicable to the contract of May 20, 1937. In the intervening period the respondent had merely continued its unfair labor practices under the guise of performance of a closed-shop agreement which had no validity. Manifestly under such circumstances the *majority* of the A. F. of L. affiliates and the purported referendum are *irrelevant.*" (Italics supplied.)

A. *The Board's Strictly Literal Construction of the Proviso Clause of Section 8(3) Is Not Permissible*

In order to sustain its position, the Board is obliged to adopt a strictly literal interpretation of the 8(3) proviso clause; it is obliged to isolate the language set forth in parentheses from the context of the proviso and from the general purposes and objectives broadly and unmistakably set forth in other provisions of the Act.

Even under a strictly literal construction of the proviso, the Board meets difficulty, for the language relied on by the Board is inserted parenthetically only, indicating that it must be a concomitant of, rather than co-extensive to, the fundamental requirement of a valid majority, and the word "assisted" must be taken as referring only to a majority obtained or maintained by such assistance, the labor organization which "is the representative of the employees as provided in Section 9(c)" being, of course, the *majority representative.*

The Board's literal method of interpretation, however, is not permissible. It is a cardinal rule of statutory construction that the intent, not the letter, of a statute constitutes the law, and that statutes are not to be so literally construed as to defeat their very purpose. Where precise words, if considered in their ordinary or literal sense, would lead to injustice or to an unreasonable or absurd result, or to a result contrary to or inconsistent with the purpose of the legislation, then the intent of the law must prevail over its letter. See *United States* v. *American Trucking Associations,* 310 U. S. 534, 84 L. Ed. 1345, and cases cited therein, where this Court said:

> "In the interpretation of statutes the function of the courts is easily stated. It is to construe the language so as to give effect to the intent of Congress. There is no invariable rule for the discovery of that intention. To take a few words from their context and with them thus isolated to attempt to determine their

meaning, certainly would not contribute greatly to the discovery of the purpose of the draftsmen of a statute, particularly in a law drawn to meet many needs of a major occupation.

"There is, of course, no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give expression to its wishes. Often these words are sufficient in and of themselves to determine the purpose of the legislation. In such cases we have followed their plain meaning. When that meaning has led to absurd or futile results, however, this Court has looked beyond the words to the purpose of the act. *Frequently, however, even when the plain meaning did not produce absurd results but merely an unreasonable one 'plainly at variance with the policy of the legislation as a whole' this Court has followed that purpose, rather than the literal words.* When aid to construction of the meaning of words, as used in the statute, is available, there certainly can be no 'rule of law' which forbids its use, however clear the words may appear on 'superficial examination.' The interpretation of the meaning of statutes, as applied to justificable controversies, is exclusively a judicial function." (Emphasis supplied.)

B. *Congress Intended to Confer Full Bargaining Rights Concerning All Matters Affecting Employment on a Union Representing an Uncoerced Majority*

Bearing these principles in mind and turning to the Act itself, what is the intent of Congress with respect to the capacity of labor organizations to enter into collective bargaining agreements? Is there anything in the Act or in the Congressional Reports or even Debates which indicated that Congress intended the extreme limitation contended for by the Board on the making of closed-shop contracts?

The general and broad intent of Congress is expressed in no uncertain terms in Section 9(a) of the Act. That section unambiguously and unconditionally states that representatives *"selected by the majority"* shall be the exclu-

sive representatives for collective bargaining in respect to "rates of pay, wages, hours of employment *or other conditions of employment.*" Obviously, as the Board points out in its brief (p. 33), such majority must be an uncoerced majority, or the Act would be meaningless—but nevertheless, a freely chosen majority is the sole prerequisite set forth in Section 9, and once that free majority exists it is to be accorded the complete and exclusive privilege of bargaining concerning *all matters* affecting employment, including the right to negotiate "conditions of employment." "Conditions of employment" would, of course, refer to and include the obligation to become or remain a union member under a closed-shop contract, union membership being a condition of employment.

The Board does not argue that the rendering of some assistance to an organization wishing to enter into an exclusive recognition, as distinguished from a closed-shop contract, which assistance, however, does not affect the majority or does not operate to create a coerced majority, would incapacitate that majority from entering into an exclusive bargaining contract under Section 9(a); in fact, that it can do so is inferentially affirmed in its brief (p. 32), and the Board in many cases has gone into the question of whether a labor organization asserting an exclusive contract as a bar to a representation investigation did in fact represent an uncoerced majority of the employees. (See Third Annual Report, p. 134.)

It is difficult to see where and how the Board can draw a distinction between the capacity to enter into an exclusive contract and the capacity to enter into a closed-shop contract. Section 9(a), as we have seen, unconditionally confers the rights upon a majority representative to negotiate concerning all conditions of employment, which would include membership obligations. If any greater limitation on the making of closed-shop contracts than on the making

of exclusive recognition contracts was intended by Congress, it certainly would have been set forth in Section 9(a). The Board can suggest no reason of policy which would require a stricter limitation on the ability of a labor organization to negotiate closed-shop contracts than to negotiate contracts concerning the very important matter of wages and hours. There is no reasonable distinction between the two classes of contracts, for certainly the matter of wages and hours is as vital to employees as is the matter of union membership, and in both cases the necessity for freedom from coercion is equally important.

If Congress had any such distinction in mind, and if Congress did intend to prescribe a greater degree of protection in the making of one type of contract than in the making of the other, a discussion of that distinction should appear in the Congressional Debates or in the Congressional Reports. Such discussion, however, is conspicuously absent from both the Debates and the Reports. All that the Reports do show is that Congress intended to confer the broadest possible rights to negotiate contracts upon a valid uncoerced majority. (See p. 13 Senate Report No. 573, 74th Congress, 1st Session.) The section of the Senate and House Reports cited by the Board in its brief (p. 33) obviously relates solely to the question of whether the Act *compels* closed-shop contracts, and the language quoted was obviously intended solely to put at ease those who feared such result. Certainly, neither this section nor any other section of the Reports that the Board might cite is a definitive exposition of the principle either that the recipience of any assistance shall incapacitate a labor organization otherwise representing an uncoerced majority from entering into a closed-shop contract, or that the right to enter into closed-shop contracts shall be more narrowly limited than the right to enter into other agreements respecting wages and hours.

C. Respondents' Contention Is Consistent With Purposes of Act; Board's Contention Is Not, And Its Contract Abrogation Remedy Is Punitive.

The construction contended for by the union—that an uncoerced majority is free to enter into closed-shop contracts—is an entirely reasonable one, is entirely consistent with the purpose of the Act to foster collective bargaining relationships where majority groups have duly selected bargaining agents, and furthermore, does not remove or limit any protection to which employees are entitled under the Act.

Where some assistance has been given, but an uncoerced majority still exists, it is the right of that group to enter into a closed-shop contract if it so wishes in spite of such "assistance"; otherwise the majority rule would have no meaning and majority wishes might never be made effective. This is not to say that those minority employees, whose free choice has been affected, have no right to protection from such interference. Of course, they have, but this the Board can afford (if the "assistance" was illegal, which, of course, as far as the present case is concerned, we deny in fact and are assuming only for the purpose of this argument) by requiring the employer to cease and desist from such interfering practices, by the posting of appropriate notices, and by reinstating such employees who might have been discriminated against. To take the further step and, in addition, to abrogate the contract which has been entered into by a free and uncoerced majority, would not serve to remedy or abate the effect of the interference in the slightest, but would, on the contrary, be entirely punitive and would neglect completely the fundamental purposes of the Act. It would be punitive because when, as here, there is no contention that the "assistance" operated to *maintain* a majority, or that the majority existing at the time of the contracts was a coerced majority, no possible remedial

result could be obtained by abrogating the contracts. The only effect of abrogating that contract would be to punish the employees, the labor organization and the employer. The contract entered into under such circumstances is not the result of such "assistance"—it is the result of the act of an admittedly free majority—and there is no reason why such uncoerced majority should be deprived of the benefits and stability of relationship it may hope for under such contract.

In *Consolidated Edison Co.* v. *National Labor Relations Board*, 59 S. Ct. 206, this Court struck down as punitive a similar attempt by the Board to abrogate a collective bargaining contract where the contract, as in the present case, was not, itself, the consequence of unfair practices. This Court stated:

> "Here, there is no basis for a finding that the contracts with the Brotherhood and its locals were a consequence of the unfair labor practices found by the Board or that these contracts in themselves thwart any policy of the Act or that their cancellation would in any way make the order to cease the specified practices any more effective."
>
> . . . . . .
>
> "The employers' practices which were complained of, could be stopped without imperilling the interests of those who for all that appears had exercised freely their right of choice.'"

D. *Board's Position Is Unsound As A Practical Proposition.*

The preposterous effects of holding that a legitimate labor organization representing an entirely free and uncoerced majority of employees is precluded or incapacitated from entering into a closed-shop contract the instant that organization is the recipient of any "assistance" on the

part of the employer, regardless of what little effect such "assistance" may have on the free choice of the majority of the employees, well illustrates the weakness of the Board's contention.

"Assistance" can consist of any act defined as an unfair practice. It may, therefore, amount to nothing more than a word of praise for a particular organization offered by a person occupying a position of authority less than that of a "straw boss", as, for instance, a "lead man" in a tool and die room. *International Association of Machinists* v. *National Labor Relations Board*, 311 U. S. 72. This "assistance" could be unsolicited, unwanted, or even unknown to the recipient organization, but it would serve to incapacitate that organization from making closed-shop contracts and would render such contracts illegal. The employer would have it well within its power effectively to interfere with the organizing activities of its employees by deliberately affording some preference. The Board's construction of the proviso would put into the employer's hands the very opportunities for interference which it is the purpose of the Act to prevent. And the proposed "remedy" would invalidate contracts which it was the purpose of the Act to foster.

E. *The Board's Argument Based on Difficulty of Ascertaining Majority Coercion Is Unsound.*

In support of its contention that Congress must have intended that any act of assistance was sufficient to incapacitate a labor organization from entering into a closed-shop contract, regardless of the effect on the majority, the Board seems to rely heavily on the argument that, as a practical proposition, it would be difficult for the Board to determine in each instance whether the choice of a majority was affected by acts of assistance, and that it could not very well inquire into the subjective responses of individual em-

ployees to an employer's acts of interference. This argument is entirely without merit and it is difficult to believe that the Board is not advancing it speciously, for the following two reasons:

1. As a practical proposition, the Board knows full well that it has complete ability to weigh and appraise overt acts of interference on the part of employers to determine whether the employer's conduct has a coercive effect on a majority, and that it can do this without inquiring into subjective responses of the individual employees. See *Texas & New Orleans R. R.* v. *Brotherhood*, 281 U. S. 548, where this Court said in respect to the use of the word "influence" in the Railway Labor Act:

> "The phrase covers the abuse of relation or opportunity so as to corrupt or override the will, and it is no more difficult to appraise conduct of this sort in connection with the selection of representatives for the purposes of this act than in relation to well-known applications of the law with respect to fraud, duress and undue influence."

The Board has made such appraisals and continues to make such appraisals in hundreds of cases. On the principle that it need not make subjective inquiries but can appraise the evidence as a whole and objectively judge its effect upon the employees, it has denied (and rightfully so) offers of employers' attorneys to place individual employees upon the stand to prove that they were not intimidated or coerced by certain conduct that the Board alleges is in violation of the Act. In fact, in every case (and there are hundreds of them, including the *Machinists'* case, 311 U. S. 72, here relied on by the Board [7]) in which it has made a specific finding that a certain labor organization does not represent an uncoerced majority, the Board has made

[7] See Third Annual Report, p. 134, and Fifth Annual Report, p. 55.

the very adjudication which it claims in its present brief it is impossible to make, thereby conclusively evidencing that the "practical difficulties" are somewhat less than "insur nountable".

2. We have seen that the requirement of complete lack of assistance, regardless of effect on the majority, applies only to the making of closed-shop contracts as distinguished from exclusive recognition contracts. However, it obviously would be equally difficult for the Board to determine the majority status in both classes of cases. If then, as the Board argues, Congress intended to relieve the Board of this obligation because of the supposed difficulty, why was it not equally considerate in prescribing the conditions prerequisite to the making of a non-closed-shop contract? The fact that Congress made no differentiation is answer both to the contention that the purpose of the proviso was to relieve the Board of the obligation, and to the contention that there is a distinction between the two classes of cases.

F. *Machinists' Case Is Easily Differentiated.*

The Board relies on the decision of this Court in *International Association of Machinists* v. *National Labor Relations Board*, 311 U. S. 72. The *Machinists'* case is entirely distinguishable; in fact, it affords support for respondents' arguments. In the *Machinists'* case this Court was presented with the contention by the Machinists' Union that the Board had erroneously failed to make a finding that its majority had been maintained by unfair practices, and that, therefore, the Board had erred in invalidating a closed-shop contract entered into by such majority. This Court answered that argument by stating that it was unnecessary for the Board to have made a finding on the issue of whether the Machinists' majority had been maintained by assistance,

because of the fact that the Board had made a specific finding that the Machinists did not in fact represent an uncoerced majority at the time that the contract was entered into. The court stated in this connection as follows:

> "* * * And the finding of the Board that petitioner did not represent an uncoerced majority of toolroom employees when the closed-shop contract was executed is adequate to support the conclusion that the *maintenance* as well as the *acquisition* of the alleged *majority* was contaminated by the employer's aid." (Emphasis supplied.)

In the present case the Board made no finding that the American Federation of Labor did not represent an uncoerced majority at the time the April contract was entered into; that is the distinction between the *Machinists'* case and the present one.

Further, it is to be noted that this Court speaks of the "maintenance" and the "acquisition" of a *majority.* This is greatly significant; for if this Court had considered that *any* act of assistance, regardless of its effect in obtaining or maintaining a majority, was sufficient to incapacitate the Machinists' organization from entering into a closed-shop contract, it would have been entirely unnecessary to have used the quoted language or to have referred to a majority at all. Further indication that this Court considered the effect of assistance on a *majority* status as material (which it would not be if the Board's position were correct) is seen in the statement by the Court at the beginning of the *Machinists* decision that,

> "* * * The main contested issue here is narrowly confined. It is whether or not the employer 'assisted' the petitioner in enrolling its *majority.*" (Emphasis supplied.)

G. *It Is Not Possible To Assume or Infer A Coerced Majority.*

It might be argued by the Board that the evidence in the present case is sufficient to support an assumption, and hence a conclusion, that the assistance affected the majority, or that the April majority was a coerced one. However, it is not possible merely to assume or infer, broadly, or from general evidence, that the A. F. of L.'s majority was a coerced one or had been maintained by acts of assistance; even assuming the "assistance" in the present case was illegal, the issue of the effect of such assistance on the majority status must be adjudicated and the fact of majority coercion proven.

This is particularly true in the present case where the allegedly illegal activities affected only a small number of employees,[8] and there is a complete lack of evidence of any history of C. I. O. hostility on the part of the employer, such as existed in the Machinists' case.

Under the circumstances of this case it cannot be lightly assumed, without the taking of specific evidence and proof, that the majority did not desire to maintain its membership in the A. F. of L., or that the limited solicitation operated to maintain such majority, and that such majority would

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[8] The Board claims the shutdown requested by the A. F. of L. as exclusive bargaining agent, and insisted upon under threat of strike, constituted a lockout and was also an unfair practice. This shutdown occurred after the foregoing acts, was prompted by the disruption caused by the C. I. O. sit-down strike, and was a matter agreed upon between the plant organization with which, at the very least, it had exclusive bargaining relationships and exclusive authority to deal for all the employees. Such an agreement was obviously a valid one, regardless of the purpose, if the A. F. of L. represented an uncoerced majority at the time of such agreement or was the duly authorized collective bargaining agent. Consequently, the shutdown would be at worst in the same class as the April 3rd agreement, both being valid if the A. F. of L. represented an uncoerced and unmaintained majority.

not have existed but for such practices. The Board raised no such issue in its complaint, the issue was not adjudicated at the hearings, and no testimony was directed to the point of whether the A. F. of L. majority was or was not maintained, or whether the A. F. of L. was not in fact the representative of an uncoerced majority at the time of the April 3rd agreement, and finally, no finding on that point was made.[9]

Consolidated Edison Co. v. *National Labor Relations Board*, 59 Sup. Ct. 206, is conclusive on the point. There this Court stated:

> "Apart from this, the main contention of the Board is that the contracts were the fruit of the unfair labor practices of the employers; that they were 'simply a device to consummate and perpetuate' the companies' illegal conduct and constituted its culmination. *But, as we have said, this conclusion is entirely too broad to be sustained. If the Board intended to make that charge, it should have amended its complaint accordingly, given notice to the Brotherhood, and introduced proof to sustain the charge. Instead it is left as a matter of mere conjecture to what extent membership in the Brotherhood was induced by any illegal conduct on the part of the employers.* The Brotherhood was entitled to form its locals and their organization was not assailed. The Brotherhood and its locals were entitled to solicit members and the employees were entitled to join. These rights cannot be brushed aside as immaterial for they are of the very essence of the rights

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[9] The courts cannot supply missing findings of fact. It is for the administrative tribunal, and not the courts, to make all necessary factual determinations. *National Labor Relations Board* v. *Somerset Shoe Co.*, 111 Fed. (2d) 681, at 689. Further, there is a presumption that a majority once validly obtained continues until specific evidence to the contrary is introduced. This is all the more true when a collective bargaining relationship under such majority has been achieved. See *National Labor Relations Board* v. *Piqua Munising Wood Products Co.*, 109 Fed. (2d) 552.

which the Labor Relations Act was passed to protect and the Board could not ignore or override them in professing to effectuate the policies of the Act. To say that of the 30,000 who did join there were not those who joined voluntarily or that the Brotherhood did not have members whom it could properly represent in making these contracts would be to indulge an extravagant and unwarranted assumption. The employers' practices which were complained of, could be stopped without imperilling the interests of those who for all that appears had exercised freely their right of choice." (Emphasis supplied.)

Perhaps the foregoing discussion concerning the necessity for adjudicating the question of whether in fact there existed a coerced majority is entirely unnecessary in the present case, for the reason that even if the case were remanded for a hearing on that issue the Board would find it impossible to make a finding that the choice of the majority of the employees was not a free one as of the time the April or May closed-shop contracts were entered into. This is true not only because of the comparatively minor nature of the employer's "assisting" activities, but, in addition, because of a much more insuperable obstacle—namely, that 771 of the 809 employees had signed individual commitments authorizing the American Federation of Labor to represent such employees exclusively for all purposes of collective bargaining for the term of the commitments. These powers of attorney were freely entered into and had not been revoked. They were binding upon the employees and gave the American Federation of Labor full bargaining rights during their terms. Thus, it would be impossible for the Board to find that the A. F. of L. did not represent a free majority on April 3rd. This portion of the argument is discussed further under Argument IV, at p. 47, *infra*.

II.

The evidence, particularly in view of the circumstantial evidence, is insufficient to support the Board's finding as to the limited scope of the oral contract. The oral contract made immaterial the "assistance" and, in any event, validated 21 of the 24 discharges.

Under the foregoing Argument I we can assume that the acts of assistance (the solicitation, etc.) were illegal. The following three Arguments, II, III and IV, assert that the alleged acts of assistance were permissible and justifiable under the Act, or were immaterial.

The first of these Arguments deals with the scope of the oral agreement prescribing membership obligations. Briefly, it is this: The oral agreement provided for almost a complete closed shop (maintenance of membership of 771 out of 809 employees, plus obligation of new employees to become members) and not, as the Board concluded, for a mere preferential shop with only new employees obligated to become members. Accordingly, during the term of the contract the Union would have the right to require those employees who the Board found had been unlawfully solicited to remain or become members, and would have the further right to require their discharge for failure to join, as the Union did require at a later date. If these discharges are considered to have taken place under the April contract, that contract (or the successor May contract) was valid, because at the time of its making the A. F. of L. was assured of a 95% majority, and no other group had made a majority claim. In any event, 21 of the 24 refusals to employ would be lawful since only 3 of the 24 employees did not come under the terms of the oral contract respecting membership requirements, these three being old employees who never had been members of the Union (R. 197).

The Board does not deny that its decision and order would not be justified if the oral agreement did provide as the parties thereto contend.[10] The evidence respecting the intent of the parties under the oral contract is set forth in the brief of the Company and need not be repeated here. It is sufficient to note that that evidence is entirely insufficient to support the Board's conclusions. Careful study of the testimony (which admittedly is not very clear) reveals that the parties must have intended to require the members who were then members to remain members, and that the parties intended that only those old employees who never were members should not be required to become members. (See R. 698, 811, 812, 264, 265, 291 and 750.) In view of the indefinite nature of the testimony, the circumstantial evidence should be given considerable weight, and the circumstantial evidence unmistakably indicates that the parties intended that the employees who were members at the time the contract was signed were to remain members.

In the first place, the Company had made no objection whatever to the Union's demand that existing members were to remain members, but had insisted merely that it would not require employees who never were members to join the Union (R. 750, 811). Obviously, the Union would only give up as much of its demand for a full closed shop as it had to; it certainly would not gratuitously forego

[10] The Board contends, of course, that the oral agreement was "secret", and that it had been abandoned when the April closed-shop contract was entered into. The Act imposes no obligation to publicly post a valid agreement after it has been entered into with knowledge and approval of duly selected union representatives—in this case representatives representing many crafts and departments. In any event the Company's public announcement, immediately following the contract, certainly put the employees on notice that interference with the contractual relationships would not be permitted. With respect to the alleged abandonment, clearly the parties intended merely to supplement the former contract so as better to counteract the disruption caused by the C. I. O. raid.

a requirement as to membership to which the Company has made absolutely no objection. The Board's conclusion respecting the scope of the membership requirement finally agreed upon is quite unrealistic to say the least.

Further circumstantial evidence that the oral contract was a virtual closed-shop contract is seen in the announcement made by the Company immediately after the contract was entered into to the effect that employees disrupting the contract relationship would be subject to discharge. This announcement was made long before the advent of the C. I. O., and there would have been no reason for making it unless prompted or supported by a virtual closed-shop oral agreement as contended by respondents.

It is submitted that the evidence, both direct and circumstantial, supports the conclusion of the court below that,

> "The Board, therefore, erred as to its order finding the respondent guilty of discrimination with reference to 18 of the 24 employees named in the order because these 18 were members of A. F. of L. affiliates, were bound by the contract until June 1937, *and were compelled to be in good union standing in order to continue in respondent's employ.*"

and that the evidence is entirely insufficient to support the Board's conclusions.

III.

Whatever employer assistance was rendered the Union at its request was justified under the Act; the right of employees to freedom from employer interference necessarily cannot be as completely unqualified after a valid collective contract has been freely entered into as prior thereto if industrial stability is to be achieved.

Under the third theory presented to the court below the various acts of assistance constitute justifiable interference because of the circumstances under which such assistance

was rendered. Briefly, the argument is this: All of the acts of assistance took place during the existence of an admittedly valid, exclusive bargaining contract (to accept the Board's limited interpretation of the agreement) and during the terms of 771 admittedly valid individual powers of attorney conferring full and exclusive bargaining rights upon the American Federation of Labor, as part of an effort to maintain the industrial peace and stability that had been bargained for under such contract. Accordingly, the acts of assistance, allegedly invalid because interfering with free choice, were permissible; the Act protects liberty to choose but not liberty to change during terms of valid collective contracts and individual commitments, and necessarily contemplates some interference as justifiable under such circumstances. Further, any interference with the rights of any individual employee occurred solely at the behest of the representative to whom the employee had duly delegated all bargaining rights and was, therefore, further justified.

All employer activity that interferes with the employees' rights is not illegal interference in violation of Section 8(1) of the Act, just as all discrimination is not illegal discrimination in violation of Section 8(3) of the Act; the existence of a closed shop would justify discrimination otherwise illegal, and similarly, the existence of certain circumstances, such as are present in the instant case, necessarily must render a certain measure of interference justifiable if the ultimate purposes of the Act are to be realized and industrial stability achieved.

We are here concerned with a very broad question: Once the ultimate objective of the Act has been achieved and a lawful and mutually satisfactory contract has been executed through a freely chosen representative, which contract is strengthened by individual commitments, is any policy of the Act effectuated by preventing peaceful cooperation by

an employer at the request of the exclusive bargaining representative for the purpose of maintaining the contract for its duration? Is the right to freedom from employer interference an absolute one, as unqualified after as well as before the making of a valid contract, or is not that right one necessarily subordinate to the ultimate objective of the Act—the making of mutually agreeable contracts and the maintenance of peaceful relationships thereunder—and to limitations thereon imposed by the voluntary act of the employees themselves—in the present case by both collective and individual agreements? The answer of the Board (as formerly constituted but not the present Board, as we shall see) is that the Act guarantees full liberty to choose and full freedom from employer interference, and that these rights are at all times unqualified. The former Board insisted that Section 8(1) of the Act must be literally and rigidly applied, seemingly regardless of whether the ultimate purpose of the Act might thereby be defeated.

A. *The Ultimate Purpose of The Act Is To Achieve Industrial Stability Through Free Contractual Relationships, And the Right to Freedom From Interference Is Incidental to That End.*

No one will deny that the attainment of stable collective bargaining relationships through negotiations between bona fide and freely chosen representatives of the employees and the employer is the fundamental objective of the Act. The declaration of policy states quite plainly that:

> "It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organi-

zation, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection."

The Senate Report also indicates that the underlying scheme of the Act was to stabilize industrial relationships by giving legal status to the process of collective bargaining, and that right to freedom from interference was given as a means to that end:

> "But many of the most fertile sources of industrial discontent can be segregated into a single category susceptible to legislative treatment. Competent students of industrial relations have estimated that at least 25 percent of all strikes have sprung from failure to recognize and utilize the theory and practices of collective bargaining, *under which are subsumed* the rights of employees to organize freely and to deal with employers through representatives of their own choosing." (Emphasis supplied.)
>
> . . . . . .
>
> "It is thus believed feasible to remove the provocation to a large proportion of the bitterest industrial outbreaks by giving definite legal status to the procedure of collective bargaining and by setting up machinery to facilitate it." (Senate Report No. 573, 74th Congress, p. 2.)

The substantive rights set forth in Section 7 of the Act and the restrictions set forth in Section 8 of the Act are directed to one purpose—that of protecting the right to organize and freely to choose representatives, *to the end* that employees may engage in collective bargaining. The right to freedom of choice obviously is given to permit free selection of a representative *so that* bargaining can be properly and fairly carried on by an organization chosen by

the employees themselves and not one foisted on them by their employer and subservient to its rather than their wishes. Accordingly, Section 7 and Section 8 grant and protect *initial* rights—rights *incidental* to the practice of collective bargaining. The Senate Report (p. 8) states this quite clearly:

> "*Sections 7 and 8. Rights of employees—Unfair labor practices.*—These sections are designed to establish and protect the basic rights *incidental to the practice of collective bargaining.*" (Emphasis supplied.)

B. Employees' Rights to Freedom From Interference Necessarily Must Be Qualified Following Valid Agreements If the Purposes of the Act Are To Be Realized.

Once a representative has been freely chosen, and once mutually satisfactory agreements have been entered into for specified and reasonable periods, the preliminary right freely to choose and join necessarily must be circumscribed if stability in industrial relationships is to be achieved and collective bargaining rendered workable. A construction of the Act which, on the pretext of protecting the right of free choice, permits employees to change their choice of representatives at will during the life of a valid collective bargaining contract and during the terms of valid individual commitments would utterly disregard, if not pervert, the ultimate purpose of the Act by rendering farcical the process of collective bargaining. This right of free choice must be considered subordinate to the basic purpose of the Act to achieve stability and industrial peace through collective bargaining agreements. The employer, as well as the bargaining representative with which it must deal, has a legitimate interest in seeking definiteness and stability in its contractual relationships. If collective bargaining contracts are to be at all effective, obligations there-

under cannot be repudiated at the whim of the employees. As stated in the Senate Report:

> "The object of collective bargaining is the making of agreements that will *stabilize* business conditions and fix fair standards of working conditions." (Senate Report No. 573, 74th Congress, p. 13.)

The Board itself has repeatedly recognized that the right to freedom of choice necessarily must be limited not only after a collective agreement has been made but even after an exclusive representative has been chosen. If Section 7 were to be interpreted literally, employees clearly would have a right to change their bargaining representative at any time that they desired. However, in the interest of stability, the Board has adopted a policy of refusing to permit a change of bargaining representative within a year after a representative has been selected. (See Fifth Annual Report, p. 55.) And the Board, of course, has consistently refused to permit a change of bargaining representative during the term of an existing contract, even though that contract may be for more than a year. In *Owens-Illinois Pacific Coast Company*, 36 N.L.R.B. No. 204 (November 15, 1941), the Board declined to disturb a two-year contract even though more than a year had passed. In upholding the plea that "if the terms of these contracts are disregarded, it will encourage raids by rival labor organizations and result in unstabilized industrial conditions and jeopardize National Defense," the Board stated as follows:

> "In view of these cicumstances we believe that the Board in furtherance of the purposes of the Act to attain stabilized labor relations in industry through collective agreements should not proceed to an investigation and certification of representatives during the term of the closed-shop contracts between the company and the C.B.B.A. Locals 141 and 140."

Former Chairman Madden expressed the following opinion in the case of *Ansley Radio Corporation and Local 1221, United Electric and Radio Workers, (C.I.O.)*, 18 N.L.R.B. No. 108:

> "In my opinion, to hold that a closed shop *or other collective agreement* may be disrupted at any time that a majority of the employees in the unit determines upon another bargaining representative would open the door wide to that very instability and uncertainty in labor relations which the Act is designed to remove." (Emphasis supplied.)

The following two decisions involving the problem of contract disruption, while of courts of lesser jurisdiction, are nevertheless quite applicable and their reasoning hardly answerable:

> "The agreement has legal sanctions even if the bargaining agent was not approved by the National Labor Relations Board after selection by the workers. The fact that it was entered by unanimous concurrence of the employees is unquestioned. It was binding upon plaintiff when entered. It should be held binding today. But mutuality and reciprocity of obligation are essentials of contractual relations. The agreement when first entered was not only obligatory upon the Local 25-31, an American Federation unit, but upon each individual member thereof * * * Plaintiff also had a contractual and a property right herein * * * Plaintiff had the right to have the employees either remain in good standing in the union, an affiliate of the American Federation of Labor, or to permit the discharge of any who did not do so without difficulty. It had contracted for industrial peace for a year so far as these men and this union were concerned on the basis of the facts disclosed in the record and the plaintiff should not have all the rights and be subject to all the liabilities of the contract."
>
> (*M. & M. Woodworking Co.* v. *Plywood & Veneer Workers' Local No. 102*, 23 Fed. Supp. 11 (U. S. D. C. Oregon).)

"Labor costs are in many industries the largest item entering into the cost of production, and if American manufacturers are to be able to compete in world markets, they must know with reasonable certainty what their labor costs will be over a reasonable period in the future. Certainly one year is not an unreasonable period during which employees may bind themselves to a fixed compensation and to definite working conditions. Indeed, it is highly to the interest of all working men that they should be able to look forward to definite employment on known conditions for some time in the future. To hold that any contract between the proprietor of a business and his employees, acting through a committee or a union, can be abrogated at any time at the will of a majority of the workers, in our judgment would not only be unsound but absurd. Exceptions dismissed."

(*Pennsylvania Labor Relations Board* v. *Red Star Shoe Co.*, 1 Labor Cases 668 C. C. H. (Penn. Ct. of Common Pleas:))

See also *M. & M. Woodworking Co.* v. *National Labor Relations Board*, 191 Fed. (2d) 938; *Peninsula & Occidental Steamship Co.* v. *National Labor Relations Board*, 98 Fed. (2d) 411 (C. C. A. 5th).

In those cases the courts have affirmed the philosophy that the purpose of the National Labor Relations Act is to obtain collective bargaining agreements for definite periods, and that employees who have designated their choice of bargaining agent, and who through these agents have entered into contractual relationships with their employers, may not disregard their obligations at will.

In the recent case of *Triboro Coach Corporation* v. *New York State Labor Relations Board*, decided July 29, 1941, 286 N. Y. 314, 36 N. E. (2d) 315, the highest court of New York held as follows on a question similar to that involved in the present case:

"Since the contract of November 14, 1939, was a contract made by the employer with a labor organization

which is 'the representative of employees as provided in section seven hundred five' (Sec. 704), it follows that this contract, which was ratified in a properly noticed meeting held by Amalgamated, by the vote of 128 employees (which constituted a majority of the 240 Triboro employees who were affected thereby) is a valid and binding contract. Since the enactment of the State Labor Relations Act (Labor Law, art. 20; Cons. Laws, ch. 31), the right of the employer to contract with the representatives selected by the employees is not in doubt (Sec. 707, subd. 5). In order for such contracts to be of any effect to carry out the policy of the act to establish industrial peace (Sec. 700), such contracts must be binding on both parties."

* * * * * * * * *

"The decisions of the Special Term and the Appellate Division are in keeping with the policy of the act as set forth in Section 700. Thus where the bargaining power between employers and employees has been equalized through the powers of the Board, the recognition of the sanctity of contracts made between the parties would seem more likely to remove sources of industrial strife and unrest. Industrial peace is promoted by collective agreements obtained for employees through the medium of their *bona fide* labor organizations or other proper representatives. When such an agreement has been obtained, and a stable relationship established thereby, the very purpose of the act may be defeated if the machinery of the Board be employed to upset such contractual relationship."

The 1941 Report of the Secretary of Labor (p. 10) contains the following illuminating and very applicable statement:

"There is another ancient deeprooted American belief. It is the belief in the sanctity of contracts, and when a trade-union signs a collective agreement with an employer, the public expects that the letter and spirit of such a contract will be observed by both parties,

even though it turns out to be a poor bargain for one or the other, *and this expectation includes the loyalty and good faith of private members, their sense of unity in accepting the decisions of elected officers or a majority of members.*" (Emphasis is supplied.)

The Board decision in the instant case was rendered in 1939. Since then a different set of members have come into office. The Board as presently constituted has adopted a construction of the Act directly contrary to that of its predecessor. In a group of decisions handed down in August, 1941, the Board upheld the principle that an employee's right to freedom from employer interference is not the same after as it was before the making of a mutually satisfactory collective contract by a freely chosen representative. In *International Envelope Corporation*, 34 N. L. R. B. No. 122, the Board stated:

> "The Union was not only the statutory representative of the discharged employees by virtue of Section 9(a) of the Act, but they had themselves designated it as their representative by becoming members. When the Union was unable to effectuate their desires, the discharged employees decided to take matters into their own hands. The Union, as the authorized representative of all the employees, disapproved of the action of the minority group by twice at regular meetings declining to support complaints of the discharged men and by intervening in behalf of the respondent in the present case. *Under such circumstances, when a dissident minority group takes action contrary to the terms of an existing contract and contrary to the wishes of the duly designated representative chosen by the majority, disciplinary action by the employer and by the Union is clearly justified. To rule otherwise would be to permit self-appointed dissenting groups within a union to ignore or to defy the legally designated representative, to take matters into their own hands, to destroy the collective agreements negotiated by majority organizations, and to undermine the process of collective bargaining itself.*" (Emphasis supplied.)

See also *Weirton Coal Co.*, 34 N. L. R. B. No. 121, and *Motor Products Corporation*, 34 N. L. R. B. No. 120.

C. *The Broad Grant Under Section 9(a) of The Act Would Be Rendered Meaningless if Employees' Freedom of Choice is Unlimited.*

Further indication that Congress did not intend the right o freedom of choice to be completely unqualified after a ona fide representative has been freely chosen by a majority and a contract has been agreed upon is seen in the broad ights granted an exclusive representative under Section (a) of the Act. We have already seen that that section ives a freely chosen majority collective bargaining representative absolute and unconditional rights to negotiate oncerning *all matters* affecting employment. Section 9 ould indeed be devoid of meaning and would indeed conr empty privileges were the prerogatives it bestows upon duly designated exclusive representative held to be subect to the whim of every individual employee who, having reely chosen and contracted, desires to change his mind.

D. *The Fact That "Assistance" Was Rendered At The equest of A Duly Authorized Exclusive Employee Representative Is of Great Significance.*

This brings us to another important consideration—the ct that all acts of claimed interference were instituted at e request of a duly authorized representative. The fact at all of the acts of assistance were rendered by mutual greement following the request of the freely selected, exusive bargaining agent necessarily eliminates all objecons from employees that their rights under the Act are ing interfered with, for that interference results not from e exercise of the untrammelled will of the employer, but om the specific request of their duly elected bargaining

agent. The Act is concerned with interference that is employer-initiated and which has for its purpose the prevention of collective bargaining relationships; the Act is not concerned with interference which is employee initiated by agreement between a bona fide exclusive representative and the employer, and which has for its purpose the preservation of existing collective bargaining relationships. There is a palpable difference between direct, self-initiated interference by an employer and interference resulting from a request on the part of the duly designated collective bargaining representative—a request motivated by the natural and legitimate right of that representative to maintain its status as such representative and to fulfill its contractual promises; a request that is honored by the employer not only because of its inherent reasonableness but also out of his desire to protect his business against disruptions that would ensue from the activities of individuals who see fit to repudiate their own promises and the activities of their own freely chosen representative.

Employees, by freely choosing an agent in the first instance as their exclusive representative, have conferred upon such representative great powers to negotiate concerning matters vitally affecting their lives and well-being. If it is within the power of their representative to negotiate concerning as important a matter as wages, why is it not equally within its power to negotiate concerning other matters affecting employment or, in particular, to negotiate concerning means and ends (not involving discharge or similar discrimination as distinguished from interference) of maintaining a stable relationship under an existing contract? Certainly, the broad grant under Section 9(a) indicates no intent to limit that right. Employees are free to change their representative at the expiration of the contract if they do not like what that representative is doing. The powers residing in that exclusive bargaining agent renders

it vitally necessary that that agent be freely chosen in the first instance, but thereafter the enjoyment of the rights termed by the Senate Report as "incidental" rights obviously must be qualified if the purposes of the Act are to be realized. The employees' remedy for abuse of the power lodged in the exclusive representative is either to elect union officials more favorable to their views or else to designate a new representative at the end of the contract period.

Another consideration affecting the question of "interference", but which has been overlooked by the Board, is the existence of the individual commitments or powers of attorney. The right to choose other representatives, assuming any such right did exist after entering into the exclusive recognition contract, had been voluntarily relinquished under the individual commitments; while the powers of attorney remained in effect, the 771 employees who had signed them certainly could not claim their freedom to choose had been interfered with. This right was not curtailed or abridged by any act of the employer acting on its own volition, but by the employees' own voluntary commitments. As stated by the court below:

> "If the one-year term limits the freedom of the employees at will to discard membership in one union for membership in another, the limitation has been freely agreed to by the men themselves, and the right of organization with representatives of their own choosing is curtailed not by the employer, but by their own valid agreement."

E. *The Respondents' Contentions Would Not Confer Closed-Shop Rights Upon Mere Exclusive Representative, As Argued By Board.*

Neither the foregoing argument, nor the argument under paragraph B, *supra* (p. —), is tantamount to saying, as the Board argues (Brief, pp. 24-26), that every bargaining

agent would acquire under an exclusive recognition contract the same rights that exist under a closed-shop contract; nor can it be said in opposition to such arguments that thereunder the proviso clause of Section 8(3) would be superfluous or meaningless, or that the Congressional intent, as manifested in its Reports, to permit no discrimination as to hire, except under a closed-shop contract, would be disregarded.

One obivous difference between a discharge in the absence of a closed-shop contract, but made under the circumstances of this case (assuming there had been a discharge in the present case prior to the April contract, which, of course, is not the fact), and an outright discharge in the absence of a closed-shop contract, is that in the former case the discharge has been made with the consent and at the request of an exclusive representative for the purpose of preserving contractual relationships, while in the latter case the discharge would be the act of the employer alone, exercising his untrammelled will for the purpose of union disruption. Further, a discharge under the circumstances of this case would not be tantamount to imposing a closed shop condition upon the employees, for, under a closed shop, the employer would have been *obliged* to discharge upon request of the union, while in the present case the employer would *not* have been so obliged, and the discharge would have to be one *mutually agreed* upon.

However, we need not in this case be concerned with the question of discharges or other violations of Section 8(3) of the Act for the reason that the respondent unions do not contend that, in the absence of a closed-shop contract, they, as exclusive representatives and under the circumstances of this case, would be entitled to ask the employer to discharge an employee or commit any other act which is in violation of Section 8(3) of the Act, and that the employer could comply with such request with impunity. The question of discrimination in violation of 8(3) is not involved

in this case in connection with any of the employer's acts prior to April 3, 1937. The Board has not charged or found any violation of 8(3) prior to the making of the April, 1937, agreement, the Board's findings as to the 8(3) violations referring solely to the employees discharged under the April agreement (R. 211). The Board did not charge or find that any of the so-called "acts of assistance" which the Board claims incapacitated the union from entering into the April agreement constituted a violation of 8(3).[11] The refusals to employ under the April agreement would not, of course, constitute a violation of Section 8(3) if the contract was valid, *i.e.*, was lawfully entered into.

Accordingly, the Board's arguments on pages 24 and 25 of its brief and its citations from the Senate Committee Reports on page 26 of its brief are entirely immaterial to the determination of the issues in the present case. The excerpt from the Senate's Report refers to "discrimination" in violation of Section 8(3) and indicates merely the Congressional intent to permit no exception to the prohibition against discharge under 8(3), except by virtue of a closed-shop contract or variant thereof. It is quite conceivable that Congress should specifically limit possible exceptions to the prohibition against discrimination; the act of discharge or demotion dealt with under Section 8(3) entails consequences of a most extreme and drastic nature. Congress has not, however, prescribed or evidenced any intent to prescribe the same rigid limitations on possible exceptions to Section 8(1) of the Act dealing with employer activities far less drastic than discharge. In the present case we are concerned with possible, and inherently necessary exceptions to the broad and very general language of Section 8(1), not to the narrow and very limited language of Section 8(3).

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[11] The Board made no finding that the confused few hours layoff of Ramsey was discrimination in violation of Section 8(3) of the Act.

F. *Respondents' Contentions Would Not Foreclose Employees From Effecting A Change of Representatives At The Expiration Of The Contract.*

The Board's final argument—that under the Unions' interpretation of the Act employees would be forever foreclosed from selecting or designating a different representative—must collapse upon examination of what Congress has specifically authorized in the statute and in the light of practical everyday experience. Congress expressly authorized a full closed-shop contract under which the greatest possible amount of coercion is permitted to enable an exclusive representative to force employees to retain membership even against their own desires. Congress would not have granted this power if it considered that, under no circumstances, was employees' freedom of choice to be interfered with, or had it imagined that thereunder employees would be forever foreclosed from changing representatives.

Further, actual experience respecting the ability of employees to change representatives, even under the extreme of a closed-shop contract, indicates quite clearly that employees would not be forever foreclosed from choosing new representatives at the end of the contract. The Board certainly is best qualified to appreciate that fact, for every day it receives numerous petitions from labor organizations alleging that a question of representation has arisen among employees covered by closed-shop contracts with rival labor organizations, which contracts are about to expire. And every day the Labor Board holds elections upon such petitions, and in a large percentage of cases the election results in favor of the petitioning organization.

G. *The Decisions Relied On By The Board Are Entirely Distinguishable.*

The decisions of this Court in the *Machinists'* case, supra, 311 U. S. 72, and the *Waterman Steamship Co.* case (*Na-*

tional Labor Relations Board v. *Waterman Steamship Company*, 309 U. S. 206) (strongly relied upon by the Board) are entirely distinguishable. In the *Machinists'* case the employer's activities operated to interfere with the exercise of free choice *prior* to the execution of any collective bargaining contract, and the employer's activities there found to be illegal were not engaged in during the existence of a lawful collective bargaining contract or during the terms of individual commitments, or at the request of the exclusive collective bargaining representatives. Further, in the present case there is no history of union hostility on the part of the employer, such as existed in the *Machinists'* case.

In the *Waterman* case it appeared that the acts of assistance, although engaged in during the existence of a contract, were not engaged in at the request of the exclusive representative, but on the employer's own initiative and clearly because of a pronounced C.I.O. antipathy. Further, the *Waterman* case involved discrimination by discharge, prohibited under Section 8(3), while here the assistance did not involve any discharges in violation of Section 8(3). Finally, in the *Waterman* case we do not have the circumstances here present—that 95% of the employees signed individual authorization cards which were still effective at the time of the illegal discharges.

H. *Final Considerations.*

Our essential thesis is that the freedoms granted to employees by Section 7 of the Act, no matter how unqualified or absolute they may be up to the point of an exclusive bargaining relationship and contract, are necessarily qualified after such an agreement is reached. Contracts, by definition, constitute a voluntary self-imposed restriction upon freedoms. And surely, those freedoms are not to be blindly asserted as inviolable and ultimate rights, at the expense of rendering the entire scheme of the Act unworkable and its fundamental purposes unrealizable.

Throughout this argument we have emphasized the poin that the Board's attempt too rigidly and technically t construe Section 8(1)—its making a fetish of the litera language of 8(1)—results in flouting and confounding th essential objective of the Act—stabilized and peaceful in dustrial relations. The absurdity of the Board's approac is readily demonstrable when viewed against our curren war situation. If stability in labor relations be desirabl under normal conditions—and no one will gainsay tha it is—how much more so when maximum, continuous an uninterrupted production is probably crucial to a success ful prosection of the war. Now, more than ever, can th value and benefits of the National Labor Relations Ac be appreciated. Yet, the Board seeks a construction o that Act which must inevitably undermine its essentia purpose.

It is a matter of common knowledge, of which thi Court may take judicial notice, that all branches of organ ized labor have undertaken, through agreement, to avoi strikes and other disruptions of production. Responsibl leaders of labor groups, conscious of their patriotic an social obligations, have pledged themselves and their or ganizations to this end. Similarly, recognized spokesmen for industry have, by agreement, pledged employers t a course of conduct that will preclude industrial stoppages

These agreements, however, no matter how sincerely in tentioned or how efficiently administered, do not and canno preclude some dissident groups among the millions of or ganized workers from engaging in unauthorized activitie that will stop production. Inevitably, unions and thei leaders will be compelled to seek the assistance of employ ers with whom they have labor agreements in order t protect contractual relationships against "wildcat" activi ties of such dissident groups, thereby effectuating thei national no-strike agreements. Yet such conduct, reason

able and even vitally necessary though it be, would under the Board's contentions constitute unlawful employer action.

It cannot be seriously argued that that kind of employer cooperation with a union request for peaceful relations is *lawful only where* there is an existing closed-shop agreement. The fact remains that, regardless of the wisdom or ethics of the closed shop, many of the leading producing corporations of the country are unalterably opposed to it and have refused, and will continue to refuse, to grant a closed shop. Congress could not constitutionally impose a closed-shop agreement on any employer. The President of the United States, in the course of the recent coal strike, stated that the Government of the United States would not compel a closed-shop agreement. Nevertheless, reduced to essential realistic terms, the Board's contentions result in the extremely narrow alternative of either the closed shop or industrial instability even though there be an existing and satisfactory collective bargaining relationship and agreement. Plainly, no process of reasoning or statutory construction should be permitted to yield a result so sharply antagonistic to the clear purposes and objectives of the Act.

IV.

The existence of the 771 valid and unrevoked individual authorizations validates the April contract and makes immaterial the "assistance".

A final argument in support of the validity of the April and May, 1937, closed-shop contracts (and, consequently, the discharges thereunder) is this: The Board in its briefs, both here and before the court below, has overlooked, and in its decision has inadequately discussed, the significance of the fact that 771 of 809 total eligible employees of the Electric Vacuum Cleaner Company signed powers of attor-

ney conferring upon the American Federation of Labor "full power and authority to act", on all matters respecting wages, hours and employment conditions during the term of the authorizations. Admittedly, these powers of attorney were entered into volutarily, without employer coercion, and represented the free will of each employee. The authorizations did not expire until June of 1937. No employee had revoked or had attempted to revoke an authorization in the manner prescribed therein or in any other manner. The commitments were in full force and effect during the period that the alleged "assistance" occurred. Cards had twice been submitted to the Company for inspection; the Company was aware that such cards were in existence and were effective until June of 1937.

Certainly, as between the Union and the individual employees, the cards were valid and binding contracts. The consideration to the employees was that the Union secure for them a beneficial bargaining contract. This was done, and that contract likewise was in existence. The Board does not question the legality or the reasonableness of the individual authorizations, and it does not assert that such authorizations were contrary to any policy of the Act, as indeed they are not, if any stability or security in employer-employee relationships is to obtain. The court below specifically held that these authorizations were valid in every respect (R. 372):

> "These authorizations, running for a term of one year and thereafter, could be withdrawn upon thirty days written notice; but the record presents no such withdrawal. The term of one year was reasonable and the authorizations were in every respect legal. Signing the authorizations entitled the men to the benefits of union membership, including the benefits of the contract between the respondent and the affiliated unions,

and they in turn were bound thereby during the term of the authorizations."

By virtue of these powers of attorney the American Federation of Labor was assured, if not guaranteed, that it would represent an overwhelming majority of the employees for the entire year. Nothing that the employer could do could destroy this assurance or could destroy the contractual right which the American Federation of Labor had to represent these employees. Nothing that the Company could do could operate to assist the American Federation of Labor to obtain or maintain its majority, the majority necessarily continuing during the terms of the individual commitments. Solicitation by the Company of those who had signed these powers of attorney could amount to no more than a request by the Company that the employees carry out what they had already agreed to under the individual authorizations. Consequently, such solicitation or such "assistance" would be entirely immaterial and could not affect the validity of the agreements of either April 3rd or May 20th. There is no showing in the record that the employer solicited any except, perhaps, one of the 38 employees who had not signed the individual authorization; and, in any event, even if all 38 of the employees who had not signed the individual authorizations had been solicited, this would represent but 5% of the total number of employees. Surely, the Board would not extend its assistance-incapacitating theory to the extent of denying 95% of the employees the right to enter into a closed-shop contract because of assistance even to 5%, let alone to 1/1000 of 1%, the greatest percent that the record can sustain as having received any "assistance".

In entering into the agreements of April 3rd or May 20th the Company acted, as it had a right to act, upon the commitments which had been made by the individual employees

signing the powers of attorney. It assumed, as it had a right to assume, that the American Federation of Labor then represented an overwhelming majority of its employees, and the American Federation of Labor did in fact represent such majority by virtue of the existing and unrevoked authorizations. As the representative of a minimum of 95% of the Company's employees, the American Federation of Labor had a right to enter into the closed-shop contracts of April and May. At the time the April 3rd contract (upon which the May 20th contract was predicated) was entered into, no other labor organization had informed or notified the employer that it claimed a majority, no petition under Section 9 of the Act had been filed, and accordingly no question of representation then existed which might preclude entering into such contract. Such contracts were valid, and accordingly the refusals to employ thereunder must be upheld.

The reasons which have been set forth in Argument III, *supra*, as to why employees should be required to live up to their agreements apply with equal force in respect to the individual authorizations. No possible purpose of the Act could be served by permitting willful disregard of commitments of this nature when they have been freely entered into with full understanding of their consequences. By individually agreeing to designate a certain representative as exclusive bargaining representative for a definite and reasonable period of time, a period of stable relationships, free from inter-union disruption, had been assured.[12] Freedom to choose *a representative* does not involve the freedom *to change such choice* at will in utter disregard of legitimate contractual obligations, in utter disregard

[12] Indeed, the question may well be raised as to whether at least 18 of the employees who had signed the authorizations, but whom the Board has found to have been discriminatorily discharged under the April 3rd contract, may not be estopped from asserting discrimination in view of the employer's reliance on their unrevoked commitments.

of commitments which have affected the status of third parties, and in utter disregard of the disrupting effect which such change of choice may have upon peaceful industrial relationships achieved through the process of bona fide collective bargaining. The existence of these cards alone, regardless of any term of any collective bargaining agreement which may have been entered into between the employer and the American Federation of Labor, justifies and legalizes the so-called "acts of assistance" which the Board has found to violate the Act, and certainly validates the closed-shop contracts of April 3rd and May 20th.

Conclusion.

It is respectfully submitted that the decree of the court below should be sustained.

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In the Supreme Court of the United States

OCTOBER TERM, 1941.

No. 588.

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

ELECTRIC VACUUM CLEANER COMPANY, INC.,
INTERNATIONAL MOLDERS' UNION OF NORTH AMERICA, LOCAL NO. 430,
PATTERNMAKERS' ASSOCIATION OF CLEVELAND AND VICINITY,
INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT NO. 54,
METAL POLISHERS' INTERNATIONAL UNION, LOCAL NO. 3, and
FEDERAL LABOR UNION NO. 18,907,
Respondents.

PETITION FOR REHEARING.

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THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO

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FEDERAL LABOR UNION NO. 18,907,
Respondents.

PETITION FOR REHEARING.

To the Honorable the Justices of the Supreme Court of the United States:

Electric Vacuum Cleaner Company, Inc., one of the respondents herein, respectfully represents:

(1) This Honorable Court, by its decision on March 30, 1942, directed the enforcement of the order of the National Labor Relations Board entered December 21, 1939, as corrected March 13, 1940, except as to reimbursement of federal, state and local work-relief projects.

(2) By this petition, respondent requests this Court to reconsider, and, if necessary, rehear the matter of whether or not the Board, by relieving respondent from paying back pay for the period from March 16, 1939 (the

date the Board gave notice of its intention to vacate its prior order), to December 21, 1939, fully and properly corrected its error in failing to file an intermediate report, or whether said period should not have begun as of August 23, 1938 (the date on which the Board overruled respondent's exceptions to the failure to file an intermediate report).

(3) Since the briefs and oral argument were directed almost entirely to other questions, and since the only references to the suspension of back pay, so far as the Board is concerned, appear in the Board's order—

> "However, since we, on our motion, gave notice on March 16, 1939, of intention to vacate, and on April 11, 1939, vacated the decision and order issued by the Board on July 7, 1938, the respondent will be relieved from paying said employees back-pay with respect to the period from March 16, 1939, to the date of our present order." (R. 209.)

and in the oral argument of Mr. Robert B. Watts, General Counsel for the Board—

> "After the usual administrative proceedings, except for the absence of a trial examiner's intermediate report, the Board's original order in this case issued on July 7, 1938. Thereafter, there having been objection by the parties to the absence of such an intermediate report, the Board on its own motion withdrew its decision, afforded the parties opportunity to except to proposed findings, and heard them fully in that regard. It thereafter issued its final order in December, 1939."

respondent is led to apprehend that the Court may have been misled as to the promptness and extent of the correction. Such misapprehension, if any, may also have been contributed to by the fact that respondent, in its brief and oral argument, claimed that the period for the suspension of compensation should have been extended even beyond the date of the overruling of its exception.

(4) With respect to delay this Court said:

> "We have noted the employer's objection to the burden of back pay placed upon it because of the Board's alleged delay in entering the final order. Handling of complaints as quickly as is consistent with good administration is of course essential. It is important both to the employer who may have to pay back wages and to the employee who must live without his job. Unfortunately this cause took from June 10, 1937, to December 31, 1939. *There is nothing in the record beyond a failure of the Board to file an intermediate report, which would tend to justify us, however, in shortening the period for compensation.* This error was admitted and corrected by the Board. We cannot penalize the employees for this happening." (Emphasis ours.)

which respondent takes to mean that the Court was of the opinion that respondent was entitled to relief from back pay for the period during which the disposition of this cause was delayed by reason of the Board's failure to file an intermediate report, and that it would have granted such relief if it had not felt that the error which the Board admitted had been fully corrected by the Board itself.

From the statement of the Board's General Counsel, *supra*, this Court may have very well assumed that the Board had corrected its error as soon as called to its attention.

Such was not the fact, and, under the circumstances, the Board's delay was inexcusable for the reason that—

(a) On July 16, 1938, respondent filed its exceptions to the Board's order, which exceptions, among others, were based particularly on the ground that *no intermediate report of the trial examiner had been filed.*

(b) On August 23, 1938, the exception to the failure to file an intermediate report, and respondent's other exceptions, were overruled by the Board.

(c) On February 2, 1939, respondent filed in the Circuit Court of Appeals for the Sixth Circuit its peti-

tion to review the Board's order, and not until after that date did the Board vacate the order of July 7, 1938, recognizing then for the first time its failure to have filed an intermediate report.

(See respondent's brief "Proceedings Before Board," page 2, and "Point IV," page 42.)

(5) It is evident that the Board, appreciating that it erred in having filed no intermediate report, applied the correction improperly to the date it vacated its order. The "thereafter" to which the Board's counsel referred in argument as the time the Board withdrew its decision because of an objection to the absence of an intermediate report, was *eight (8) months* after respondent's exception, calling the error to the Board's notice, had been overruled by the Board, and after respondent had been put to the expense of filing its petition in the Circuit Court of Appeals, which petition was dismissed on the motion of the Board because it had vacated the order which the petition sought to review.

(6) As this Court observed, the proceedings before the Board unfortunately took from June, 1937, to December, 1939. Respondent is not now challenging or seeking to present again to this Court any matters determined by this Court's decision, except the delay admittedly due to the Board's error, and which error the Board, for eight (8) months after knowledge of its error, refused to rectify and permitted to continue.

(7) Following the decision of this Court, even though the mandate has not yet issued, respondent has taken up with, and the Board now has under consideration, the details relative to respondent's compliance with the Board's order. Respondent is not asking that the time within which the mandate shall issue be enlarged to permit a ruling on this petition. Five years have elapsed since this case was begun, and its disposition should be expedited, and since back pay involves only a mathematical computation, such

computation may be adjusted whenever this petition for rehearing is disposed of without the need for delaying compliance with the order in other respects.

Therefore, respondent respectfully prays this Honorable Court that it rehear or reconsider the matter of the delay in the correction of the Board's error in failing to have filed an intermediate report, and extend the period for the suspension of back pay to a period beginning August 23, 1938, the date the Board overruled respondent's exceptions, instead of the period beginning March 16, 1939, selected by the Board.

Respectfully submitted,

Lawrence C. Speeth,
Herbert A. Spring

Counsel for Respondent,
Electric Vacuum Cleaner
Company, Inc.

Dated:
April 17th, 1942.

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay.

Lawrence C. Speeth

SUPREME COURT OF THE UNITED STATES.

No. 588.—October Term, 1941.

National Labor Relations Board, Petitioner, vs. Electric Vacuum Cleaner Company, Inc., and International Molders' Union of North America, Local 430, et al.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.

[March 30, 1942.]

Mr. Justice Reed delivered the opinion of the Court.

The basic question for determination by this review is the right of the respondent employer, the Electric Vacuum Cleaner Company, Inc., to cooperate with unions, representing an uncoerced majority of its employees, to secure new members. The right is challenged because exercised prior to a closed shop agreement.

The other respondents are various unions, all affiliated with the American Federation of Labor, which we shall call the Affiliates. Since June 22, 1935, these unions have been recognized by the employer as the duly chosen agents of the employees for collective bargaining. On that date the Affiliates and the employer entered into a written contract covering hours and working conditions for the period ending June 23, 1936. A similar contract extended the arrangements to June 23, 1937. In making the latter contract the Affiliates satisfied the employer of their right to represent the workers by exibiting authorization cards totaling 771 out of the 809 employees affected. These cards gave the Affiliates "full power and authority" to conclude for the signer "all agreements as to hours of labor, wages and other employment conditions." They were to "remain in full force and effect for one year from date and thereafter, subject to thirty (30) days written notice of my desire to withdraw such power and authority to act for me in the matters referred to herein." We assume that the cancellation clause is ineffective prior to twelve months from the date of the card and that all cards were dated just prior to the termination of the first or 1935 contract.

In March, 1937, when the contract and the individual powers of attorney still had several months to run, the United Electrical and Radio Workers of America (hereafter called United) affiliated with the Committee for Industrial Organization, began an effort to organize the plant. The Board on adequate evidence found that about sixty employees immediately signed United cards, that on March 19th a meeting of United was held at the Post Office building in East Cleveland, attended by a "large number of employees," and that on March 28th another United meeting was held "by a large number of persons, for the purpose of securing formal resignations from the A. F. of L. Affiliates." It is undisputed that a United charter was issued to the interested employees for a Local 720, and that on April 2nd the Local notified the employer by letter that a majority of its employees had resigned their memberships in the Affiliates and had "affiliated" themselves with United. Local 720 claimed in the letter the right to negotiate grievances "under the existing contract," i. e., that expiring June 23, 1937. This letter was not received by the employer until April 5th.

Prior to the receipt of this letter and during a shutdown of the plant by the employer, which had begun on Monday, March 22, 1937, pursuant to a request of the Affiliates, dated March 20th, the employer and the Affiliates had entered into an oral arrangement on Saturday, April 3rd, pursuant to which the employer notified its employees it was reopening its plant Monday, April 5th, under the contract expiring the subsequent June 23rd and added "but only those employees who are members of the crafts under contract with us will be employed." Eventually a closed shop clause appeared in a bilateral written contract, superseding the one expiring June 23rd, executed as of May 20, 1937, in the following form:

Article III (d) "The Employer agrees to employ only members of the Unions in good standing in their respective Unions, and should the Employer require more employees than those now employed, the Employer will secure such employees through the Unions, if however, the Unions are unable to furnish such employees, the Employer may secure them elsewhere, it being understood, however, that such employees so secured shall become members of the Union."

On the reopening of the plant no one was permitted to return to work who did not present a clearance card from the Affiliates.

The refusal of the company to reemploy certain members of United Local 720 gave rise to charges of unfair labor practices, which were sustained by the National Labor Relations Board. 18 N.L.R.B. 591. The employer was ordered to cease and desist from discouraging membership in United and encouraging membership in the Affiliates; from giving any effect at any time to paragraph (d) of Article III of the May 20, 1937, agreement, quoted above, requiring a closed shop; from giving any effect to the remainder of the May 20, 1937, agreement upon certification of any other labor organization than the Affiliates as exclusive collective bargaining representative, and from in any manner interfering with its employees' rights to self-organization. The order required affirmative action by the employer for certain employees to the extent of reinstatement and back pay with the usual provisions for posting notices of compliance and notification of the Board. Some other charges and a petition for investigation and certification of bargaining representatives were dismissed without prejudice.[1]

The respondents successfully contested an enforcement petition. The Circuit Court of Appeals set aside the order, 120 F. 2d 611, on the ground that the refusal to permit members of the United to resume their work was justified because at the time a valid closed shop contract in favor of the Affiliates under § 8(3) of the statute, set out below, was in effect.[2] Deeming the issues important in the administration of the Act, we granted certiorari. — U. S. —.

In addition to the facts just stated, the Board found there was an oral provision pertaining to a closed shop included in the 1935 and 1936 contracts. This was to the effect, the Board concluded, that all employees hired after the date of the first contract (referred to as new employees) should be required after a work-probation period of two weeks to become members of the appro-

[1] Certain clauses of the order relating to reimbursement of federal, state and local work-relief projects are abandoned by the Board and should be eliminated. Republic Steel Corp. *v.* Labor Board, 311 U. S. 7.

[2] 49 Stat. 452, c. 372, § 8: "It shall be an unfair labor practice for an employer— . . . . (3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or . . . . any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9(a), in the appropriate collective bargaining unit covered by such agreement when made." 29 U. S. C. § 158(3).

priate Affiliate union. Respondents contend the oral addition was somewhat different, and that under it not only were new employees compelled to join the Affiliates but old employees (those employed before the first contract) who were or who became members of the Affiliates were required to maintain their membership unimpaired. Respondents' position was upheld by the Circuit Court of Appeals for this and other reasons. The freedom of old employees, under the earlier contracts, to join or not, as they wished, is acknowledged by all.

The Court relied heavily upon the authorizations to bargain[3] furnished the Affiliates by the old employees, as indicating the old employees who were members must maintain that status until the year was up. Assuming that every old employee furnished a power of representation for collective bargaining not revocable during the year, it need not be inferred the employee also was bound thereby not to switch his union allegiance. If the employee were forced to await the expiration of the year before changing membership, the first bargaining representative might have a contract for the ensuing year executed before a new representative could be organized and empowered to act. There is nothing in this record to compel such interpretation of the authorizations. With respect to the contract between the employer and the Affiliates, the Board cites the evidence of several, including a letter from the employer's president, written before any controversy arose, to the effect that the oral provision was that new employees must join the Affiliates. From this evidence, the Board was fully justified in reaching its determination that nothing more was agreed. *Labor Board* v. *Automotive Maintenance Mach. Co.*, — U. S. —; *Labor Board* v. *Falk Corp.*, 308 U. S. 453, 461; *Labor Bd.* v. *Greyhound Lines*, 303 U. S. 261, 271. There is a difference between being bound to retain the same bargaining representative for a specified period, and being bound not to become a member of a different union during the term of the contract. The first situation, not the second, arose from the earlier contracts.

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[3] "I, the undersigned, . . . hereby authorize my Craft Organization . . . to represent me and, in my behalf, to negotiate and conclude all agreements as to hours of labor, wages and other employment conditions. . . .

"The full power and authority to act for the undersigned as described herein supersedes any power or authority heretofore given to any person or organization to represent me, and shall remain in full force and effect for one year from date and thereafter, subject to thirty (30) days written notice of my desire to withdraw such power and authority to act for me in the matters referred to herein."

The commencement of the United campaign for membership in March brought cooperative action between the employer and the Affiliates to strengthen the latter's position. Under the oral contract, as defined by the ruling of the Board, now approved here, new employees could properly be required to become members of the Affiliates but old employees could neither be required to become members nor to maintain their membership. The Board found that to forestall defections of old employees from the Affiliates to the United the employer "summoned old employees to the office and there sought to, and in many instances was able to, coerce them into joining the A. F. of L. Affiliates." In the office were representatives of the Affiliates as well as the employer. A number of old men were called before this group. It is not clear from the record which ones had been members of the Affiliates and lost their standing, or which ones had never been members. There were instances of each type. Vitosky had been a member. Ramsey had not. Both Vitosky and Ramsey were old employees, each in service long prior to the first contract. Vitosky and four others signed affiliate cards on demand and returned to work. Ramsey refused to sign and was discharged. Upon the report of Ramsey's discharge reaching the workshops, there was a one day sit-down strike. Respondents urge that Ramsey's discharge was the result of an error. This issue need not be resolved as there is evidence that some old men, in violation of the collective bargaining agreement, were required to maintain or renew their membership in the Affiliates prior to the closed shop agreement of April 3rd. Such facts are adequate to support the Board's ruling of coercion of employees by the employer in order to maintain the membership of the Affiliates. Without a closed shop contract covering the employees involved, this company effort to maintain a union violates provisions protecting the freedom of employees to organize as they may wish. 49 Stat. 452, §§ 7, 8(1), 8(3); 29 U. S. C. §§ 157, 158(1), 158(3).

Furthermore, upon the adjustment of this sit-down strike which took place Friday, March 19th, after the occurrences just described, the Affiliates requested and the employer ordered a shutdown of the entire plant which lasted from March 22nd to April 5th. The Board found that this shutdown was for the purpose of preventing "further proselyting" among members of the Affiliates by the United. A vice-president of the employer testified to such facts, learned by him in conference with officials of the Affiliates who

stated they needed the time to "get their lines in order." Assistance to a union by a shutdown, like any other employer assistance, is forbidden.[4]

Respondents assert that whatever employer assistance was rendered the Affiliates was justified even under an interpretation of the contract which restricts the oral portion to a requirement that new members join the Affiliates. The assistance, it is urged, was rendered to collective bargaining representatives, selected freely by a majority of the employees and possessed of unrestricted and unrevoked powers to negotiate generally over labor conditions including the closed shop clause of April 3rd and the new closed shop contract of May 20, 1937. Under this view, since the discharges took place after a valid closed shop amendment, they were in conformity with § 8(3) of the Labor Act.

An examination of the proviso of § 8(3) will demonstrate the error of this position. That proviso reads, so far as pertinent, as follows:

"*Provided*, That nothing in this Act . . . shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9(a), in the appropriate collective bargaining unit covered by such agreement when made."

Under the findings already sustained, the Affiliates were assisted and maintained by the cooperation of the employer in dealing with the old employees. Such acts encouraged the labor organization in violation of the portion of § 8(3) preceding the proviso, set out in note 2. Consequently when the closed shop agreement was adopted, April 3rd, it was invalid because entered into with a labor organization assisted by an employer in the precise words of § 8(3) quoted above. Cf. *I. A. of M.* v. *Labor Board*, 311 U. S. 72, 81. Being invalid, the discharges violated §§ 7, 8(1) and (3).

Respondents, however, take the position that the Congressional purpose embodied in the Labor Act is not served by such literalness. As they see the situation, freedom to organize must necessarily be qualified after uncoerced employees obtain validly chosen majority representatives. Previously untrammeled rights, they

[4] National Labor Relations Board v. Lund, 103 F. 2d 815; National Labor Relations Bd. v. National Motor B. Co., 105 F. 2d 652.

argue, must be subjected to the modicum of interference here practiced, in order that the Congressional object of industrial peace may be realized. We think, however, that the Board's interpretation of the applicable language is correct. The provision for a closed shop as permitted by § 8(3) follows grammatically a prohibition of discrimination in hiring. These words of the exception must have been carefully chosen to express the precise nature and limits of permissible employer activity in union organization. To permit employer interference prior to the execution of a closed shop contract, as soon as a bare majority of employees had properly selected their reppesentatives, would go fa' to restore the type of company-union coordination in labor matters which the act forbids.[5]

Since we have held that assistance was given the Affiliates by the unfair labor practice of encouraging membership in those unions, it follows that the closed shop agreement of April 3rd, requiring old employees to be members of the Affiliates, was made with an assisted labor organization and could be held invalid. *I. A. of M.* v. *Labor Board*, 311 U. S. 72, 75. How long that invalidity continues is an inference of fact for the fair determination of the Board. Cf. *H. J. Heinz Co.* v. *Labor Board*, 311 U. S. 514, 522. Consequently the refusal of the employer to permit the employees to work without clearance from the Affiliates could be found a forbidden interference and discrimination. § 8(1) and (3). *Labor Board* v. *Link-Belt Co.*, 311 U. S. 584, 601. Further, the Board's conclusion that the infirmities of the April 3rd arrangement were destructive of the May 20th contract proceeds naturally from its decision as to the effect of the employer activities prior to April 3rd. The force of the unfair practices was not necessarily dissipated so quickly.

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[5] There is an illuminating comment in the Senate Report on the Labor Bill. S. Rep. 573, 74th Cong., 1st Sess., p. 12:

"The assertion that the bill favors the closed shop is particularly misleading in view of the fact that the proviso in two respects actually narrows the now existent law regarding closed-shop agreements. While today an employer may negotiate such an agreement even with a minority union, the bill provides that an employer shall be allowed to make a closed-shop contract only with a labor organization that represents the majority of employees in the appropriate collective-bargaining unit covered by such agreement when made.

"Secondly, the bill is extremely careful to forestall the making of closed-shop agreements with organizations that have been 'established, maintained, or assisted' by any action defined in the bill as an unfair labor practice. And of course it is clear that no agreement heretofore made could give validity to the practices herein prohibited by section 8."

The employer calls our attention to provisions of the order reinstating employees which it feels erroneous. So far as this objection is based on an interpretation of the 1936 oral contract to require old employees to maintain their membership, it is answered by prior portions of this opinion. The employer's refusal to admit these old employees to work on and after April 5th is properly remedied by reinstating them in their position and granting them back pay.

There is a different basis, however, for the objection to the reinstatement of the new employees. This is that under any interpretation of the oral clause of the 1936 contract, these men must become members of the Affiliates and therefore the employer's refusal to take them back on their jobs is proper, even though the April 3rd arrangement is invalid. The Board answers that the April 3rd arrangement was an abandonment of the earlier oral clause and that consequently the discharges made pursuant to the later invalid closed shop arrangements are improper. The abandonment, the Board finds, was intentional and therefore the subsequent invalidation of the later arrangement did not revive the vitality of the earlier oral contract.

This finding of abandonment of the 1936 membership clause was an inference drawn by the Board from the circumstances surrounding the adoption of the April 3rd arrangement. It is an inference the Board is entitled to make when supported by material evidence. To the Board, the Congress has entrusted the appraisal of the evidence and the drawing of such inferences. 49 Stat. 454, § 10(e); *Labor Board* v. *Waterman S. S. Co.*, 309 U. S. 206, 209; *Labor Board* v. *Link-Belt Co.*, 311 U. S. 584, 597. The lack of positive evidence of the abandonment is natural. It was found abandoned by the Board because of the actions of the parties, the employer and the Affiliates, looking to the creation of a new, all embracing closed shop contract. While the Board found the 1936 oral clause had covered only new employees, the Affiliates issued a notice to their members dated March 31st saying the "solution to the problem [i.e., "the situation that resulted in the closing of the plant"] is proper enforcement of the present agreement, and that no one be allowed to resume work unless affiliated with these organizations." On April 3, 1937, the employer notified its employees that in 1936 "it was agreed that we employ only persons affiliated with said crafts" (the Affiliates). Such interpretation of the old clause, varying so radically from that adopted by the

Board, is not conducive to clear-cut evidence of the purpose of the substitute closed shop arrangement of April 3rd. Considered against the background of coercion of old employees, the strike difficulties and the closing of the plant, all affected at least by the United's membership campaign, we are not willing to say that the Board's finding that "In substance, though not in form, the arrangement effected between the respondent and the A. F. of L. Affiliates on or about April 3, 1937, was an abandonment of the oral agreement as insufficient to meet the exigencies of the situation and its replacement by a closed-shop agreement," is unsupported by substantial evidence.

We have noted the employer's objection to the burden of back pay placed upon it because of the Board's alleged delay in entering the final order. Handling of complaints as quickly as is consistent with good administration is of course essential. It is important both to the employer who may have to pay back wages and to the employee who must live without his job. Unfortunately this cause took from June 10, 1937, to December 31, 1939. There is nothing in the record, beyond a failure of the Board to file an intermediate report, which would tend to justify us, however, in shortening the period for compensation. This error was admitted and corrected by the Board. We cannot penalize the employees for this happening.

The judgment of the Circuit Court of Appeals is reversed with directions to enforce the order of the Board except as to reimbursement of federal, state and local work-relief projects.

It is so ordered.

Mr. Justice ROBERTS is of the opinion the judgment should be affirmed for the reasons stated in the opinion of the Circuit Court of Appeals. 120 F. 2d 611.

A true copy.

Test:

Clerk, Supreme Court, U. S.